No. 15234

United States
Court of Appeals
for the Ninth Circuit

ACME DISTRIBUTING COMPANY, CALIFORNIA BEVERAGE & SUPPLY CO., and YOUNG'S MARKET COMPANY,

Appellants,

vs.

JOHN COLLINS, doing business as Stan's Stage Coach Stop, alleged bankrupt,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—1-14-57

No. 15234

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

CRAIG, WELLER & LAUGHARN

817, 111 West 7th Street,
Los Angeles 14, California

For Appellee:

PATRICIA HOFSTETTER,
GRAINGER, CARVER & GRAINGER,

830 H. W. Hellman Building
354 South Spring St.,
Los Angeles 13, California [1]*

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* Page numbers appearing at foot of page of original Transcript of Record.

United States District Court, Southern District of California, Central Division

No. 67977-Y—Bkcy.

In the Matter of JOHN COLLINS, dba STAN'S STAGE COACH STOP,

Alleged Bankrupt.

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 22nd day of August, 1955;

Whereas, a petition was filed in this court on the 22nd day of August, 1955, against John Collins, alleged bankrupt above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Benno Brink, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said John Collins, dba Stan's Stage Coach Stop, shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ BEN HARRISON
District Judge. [2]

[Title of District Court and Cause.]

CREDITORS AMENDED INVOLUNTARY PETITION

To The Honorable Judges of the District Court of the United States, for the Southern District of California:

Permission of the Court having first been obtained, the undersigned petitioning creditors hereby file their amended involuntary petition and allege:

I.

That the alleged bankrupt, John Collins, has had his principal place of business at 13113 San Antonio Avenue, Norwalk, California, and within the Southern District of California and within the judicial district above named, for a period of the greater portion of the six months immediately preceding the filing of this petition, and that said alleged bankrupt is not a municipality, railroad, insurance or banking corporation, or a building and loan association, but is or was engaged in the retail liquor business at the above address.

II.

That your petitioners are creditors of the above [3] named alleged bankrupt and hold provable claims against him, fixed as to liability and liquidated as to amount, amounting in the aggregate in excess of the value of securities held by them in the sum of more than $500.00.

III.

That the nature and amounts of your petitioners' claims are as follows:

That the alleged bankrupt is indebted to your petitioner, Acme Distributing Co., in the sum of approximately $417.00 for goods, wares and merchandise sold and delivered by your petitioner to the alleged bankrupt within four years last past, no part of which amount has been paid, and that the whole thereof is due, owing and unpaid, and that at all times herein mentioned your petitioner was, since has been and now is a corporation organized and existing under and by virtue of the laws of the State of California.

That the alleged bankrupt is indebted to your petitioner, California Beverage and Supply Co., in the sum of approximately $955.00 for goods, wares and merchandise sold and delivered by your petitioner to the alleged bankrupt within four years last past, no part of which amount has been paid, and that the whole thereof is due, owing and unpaid, and that at all times herein mentioned your petitioner was, since has been and now is a corporation organized and existing under and by virtue of the laws of the State of California.

That the alleged bankrupt is indebted to your petitioner, Young's Market Co., in the sum of approximately $242.70 for goods, wares and merchandise sold and delivered by your petitioner to the alleged bankrupt within four years last past, no part of which amount has been paid, and that the whole thereof is due, owing and unpaid, and that at all times herein mentioned your petitioner was, since has been and now is a corporation [4] organized and existing under and by virtue of the laws of the State of California.

IV.

That within four months immediately preceding the filing of this petition, the bankrupt was insolvent, and on or about August 4, 1955, made or suffered a transfer of his property fraudulent under the provisions of Sections 67 and 70 of this Act, by the means and in the manner hereinafter specifically set forth, namely:

That on or about August 4, 1955, and at which time the bankrupt was insolvent, the bankrupt caused a transfer of a certain on sale general distilled spirits license to one Fred De Carlo without a fair consideration or without any consideration therefor, and which thereby rendered him insolvent, which said on sale liquor license was and is of a reasonable and current market value of between $4,500.00 and $5,000.00; that said bankrupt completed the said transfer in so far as any act required of him to do in order to effectuate said transfer, in that on August 4, 1955, and within four months preceding the filing of the petition herein, the bankrupt filed with the California Department of Alchoholic Beverage Control an application for transfer of license duly executed by him and acknowledged before a Notary Public, whereby he transferred said liquor license to the said Fred De Carlo; that said transfer was thereby so far completed that neither the bankrupt nor a bona fide purchaser from him could obtain greater rights in said liquor license than the said Fred De Carlo.

V.

Your petitioners, and each of them, have in writ-

ing authorized Frank C. Weller, an attorney at law and their attorney in these proceedings, for the purpose of convenience and expedition to verify this petition on their behalf. [5]

That attached hereto and marked Exhibits "A," "B" and "C" are full, true and correct copies of the authorizations of your petitioners to the said Frank C. Weller to verify this petition as their agent.

Wherefore, your petitioners pray that service of this petition, together with a subpoena, be made upon said alleged bankrupt as provided in the Acts of Congress relating to bankruptcy, and that he may be adjudged by this Court to be a bankrupt within the purview of this Act.

ACME DISTRIBUTING CO.,
/s/ By FRANK C. WELLER,
Its Authorized Agent.

CALIFORNIA BEVERAGE AND SUPPLY CO.
/s/ By FRANK C. WELLER,
Its Authorized Agent.

YOUNG'S MARKET CO.,
/s/ By FRANK C. WELLER,
Its Authorized Agent.

CRAIG, WELLER & LAUGHARN
/s/ By THOMAS S. TOBIN,
Attorneys for Petitioning Creditors

Duly Verified. [7]

EXHIBIT "A"

[Letterhead of Acme Distributing Company, 344 South Raymond Avenue, Pasadena, California.]

August 19, 1955.

Frank C. Weller
111 West Seventh St.,
Los Angeles 14, Calif.

Dear Sir:

Re: John Collins, formerly dba Stan's Stage Coach Stop.

This will authorize you as our authorized agent to file an involuntary petition in bankruptcy in the above matter on our behalf.

Yours very truly,

ACME DISTRIBUTING COMPANY
/s/ THOMAS HARALAMBOS,
Thomas Haralambos,
President

TH/a [8]

EXHIBIT "B"

[Letterhead of Young's Market Company, 1610 West Seventh St., Los Angeles 54.]

August 19, 1955.

Frank C. Weller
111 W. 7th Street
Los Angeles, California

Dear Mr. Weller:

Please file an involuntary bankruptcy action

against John Collins, dba Stan's 13113 So. San Antonio, Norwalk, California. This party is indebted to us as follows:

August 18, 1953	Invoice 47838 for	28.86
October 5, 1953	Invoice 71405 for	213.84
		242.70

This is in line with our telephone conversation as of today.

Yours very truly,

YOUNG'S MARKET COMPANY

/s/ E. R. KOCH

E. R. Koch,

Comptroller.

ERK:ed [9]

EXHIBIT "C"

[Letterhead of California Beverage & Supply Co., 1409-21 East Anaheim Street, Long Beach 13, California.]

August 19, 1955.

Frank C. Weller
111 West Seventh Street
Los Angeles 14, California

Dear Sir:

This letter will be your authority to execute in our behalf a petition of involuntary bankruptcy against Mr. John A. Collins of 13113 South San

Antonio Drive, Norwalk, California. The amount of our claim is $955.16.

Very truly yours,

CALIFORNIA BEVERAGE & SUPPLY CO.

/s/ HARRY S. KRONICK,
Harry S. Kronick,
Vice President.

HSK/mp

[Endorsed]: Filed Sept. 8, 1955. [10]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO ANSWER OR OTHERWISE PLEAD

It Is Hereby Stipulated By and Between the alleged bankrupt above named and the petitioning creditors on the Creditors' Petition filed against the said alleged bankrupt, that the alleged bankrupt may have to and including the 26th day of September, 1955, within which to answer or otherwise plead to the Creditors Amended Involuntary Petition on file herein.

Dated this 14th day of September, 1955.

PATRICIA J. HOFSTETTER
GRAINGER, CARVER AND GRAINGER

/s/ By A. O. CARVER
Attorneys for Alleged Bankrupt

CRAIG, WELLER & LAUGHARN
/s/ By THOMAS S. TOBIN

It Is So Ordered. September 16, 1955.
/s/ BENNO M. BRINK
Referee in Bankruptcy

[Endorsed]: Filed Sept. 16, 1955. [11]

[Title of District Court and Cause.]

ANSWER OF ALLEGED BANKRUPT

Comes now John Collins, the alleged bankrupt above named, and answering the Creditors Amended Involuntary Petition filed herein admits, denies and alleges as follows:

I.

Answering Paragraph I of said Creditors Amended Involuntary Petition, the alleged bankrupt herein denies that he has had his principal place of business at 13113 San Antonio Avenue, Norwalk, California, for a period of the greater portion of the six months immediately preceding the filing of said petition and denies that he has had any place of business within said period at all, and in this connection alleges that he has had no place of business and has conducted no business at all since December, 1954.

II.

Answering Paragraph II of said Creditors

Amended Involuntary Petition, the alleged bankrupt herein denies each and every allegation therein contained. [12]

III.

Answering Paragraph III of said Creditors Amended Involuntary Petition, the alleged bankrupt herein denies that he is indebted to Acme Distributing Co., in the sum of $417.00, or in any other sum for goods, wares and merchandise sold and delivered by it to the alleged bankrupt within four years last past as alleged, or at all, and denies that he is indebted to Acme Distributing Co. in any sum for any purpose, or at all.

Further answering Paragraph III of said Creditors Amended Involuntary Petition, the alleged bankrupt herein denies that he is indebted to California Beverage and Supply Co., in the sum of $955.00, or in any other sum for goods, wares and merchandise sold and delivered by it to the alleged bankrupt within four years last past as alleged, or at all, and denies that he is indebted to California Beverage and Supply Co. in any sum for any purpose, or at all.

Further answering Paragraph III of said Creditors Amended Involuntary Petition, the alleged bankrupt herein denies that he is indebted to Young's Market Co., in the sum of $242.70, or in any other sum for goods, wares and merchandise sold and delivered by it to the alleged bankrupt within four years last past as alleged, or at all, and denies that he is indebted to Young's Market Co. in any sum for any purpose, or at all.

IV.

Answering Paragraph IV of said Creditors Amended Involuntary Petition the alleged bankrupt admits that on or about August 4, 1955, he filed with the California Department of Alcoholic Beverage Control a Declaration of Intention to transfer license to Fred De Carlo, but said alleged bankrupt denies each and every other allegation set forth and alleged in said Paragraph IV of said Creditors Amended Involuntary Petition. [13]

Second Defense

Said alleged bankrupt alleges that he was not insolvent at the time of the filing of the original creditors petition and the institution of the proceedings herein.

Wherefore, said alleged bankrupt prays that a hearing may be had on said Creditors Amended Involuntary Petition and this answer, and that the issues presented thereby may be determined by the court.

/s/ JOHN COLLINS

PATRICIA J. HOFSTETTER
GRAINGER, CARVER AND
GRAINGER

/s/ By PATRICIA J. HOFSTETTER
Attorneys for Alleged Bankrupt.

Duly Verified. [14]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Sept. 24, 1955. Benno M. Brink, Referee. [15]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON INVOLUNTARY PETITION

The involuntary petition in the above entitled matter coming on for hearing before the undersigned Referee in bankruptcy, pursuant to notice of October 20, 1955, at 10:00 A.M., and having been continued to November 3, 1955 at 10:00 A.M., and coming on for hearing before the undersigned Referee at his courtroom in the Federal Building, Los Angeles, in the Southern District of California, the petitioning creditors appearing in person and by their attorneys, Craig, Weller & Laugharn, Thomas S. Tobin of counsel, and the bankrupt appearing in person and by his attorneys, Messrs. Grainger, Carver & Grainger, Adele Carver of counsel, and Patricia J. Hofstetter, and testimony having been taken and the matter having again been adjourned to November 4, 1955, and thereafter by various continued hearings up to and including December 8, 1955, and the testimony having been concluded and various exhibits having been received in evidence on behalf of the petitioning creditors, and the alleged [16] bankrupt under the petitioning creditors' amended involuntary petition and the answer thereto, and the Referee having considered the evidence and being fully advised in the premises, now on motion of Messrs. Craig, Weller & Laugharn, Thomas S. Tobin of counsel, makes the following:

Findings of Fact

I.

The Referee finds that the alleged bankrupt has resided at 10423 East Townley Drive, Whittier, California, and within the Southern District of California, for a longer portion of the six months immediately preceding the filing of the involuntary petition herein than in any other judicial district, and that until on or about December 21, 1954, he was engaged in the retail liquor business at 13113 South San Antonio Avenue, Norwalk, California, and within the Southern District of California; that in the operation of said liquor business said alleged bankrupt incurred liabilities which remain unpaid and are now due and owing.

II.

The Referee finds that the bankrupt at the date of the filing of the petition herein on August 22, 1955, was indebted to the Acme Distributing Co., in the sum of $417.00 on open account, to the California Beverage and Supply Co. in the sum of $955.00 on open account, and the Young's Market Co. in the sum of $242.70 on open account, none of which accounts have been paid.

III.

The Referee finds that the bankrupt was insolvent on August 4, 1955; that he was the owner of a general distilled spirits license issued in his name and of a reasonable market value of approxi-

mately $5,000.00; that within four months immediately [17] preceding the filing of the involuntary petition herein, and on August 4, 1955, while so insolvent, the bankrupt filed with the Alchoholic Beverage Control of the State of California an application to transfer said liquor license to one Fred De Carlo, a friend, without any consideration whatsoever; that the bankrupt executed all papers necessary to effectuate said transfer, place said liquor license beyond his reach and control, and so far accomplished said transfer that no bona-fide purchaser from the bankrupt could obtain greater rights in said on-sale general distilled spirits license than the transferee thereof, Fred De Carlo.

IV.

That the Referee finds that the bankrupt is insolvent; that all of his assets, including property which would be exempt under the laws of the State of California, taken at a fair valuation, total in value the sum of $7,068.75, and the bankrupt's total liabilities as of the date of the filing of the involuntary petition herein amounted to, and do now amount to, the sum of $8,867.23.

Based on the foregoing findings of fact, the Referee makes the following

Conclusions of Law

I.

That the petitioning creditors have sustained the burden of proof required of them under Section 3

of the National Bankruptcy Act, and that the alleged bankrupt should be adjudged to be a bankrupt under the provisions of Section 4-b of the National Bankruptcy Act.

Let an order be entered accordingly.

Dated this 16th day of December, 1955.

/s/ BENNO M. BRINK
Referee In Bankruptcy

[Endorsed] : Filed Dec. 16, 1955. [18]

[Title of District Court and Cause.]

ORDER ADJUDGING ALLEGED BANKRUPT TO BE A BANKRUPT

An involuntary petition having been filed against the above named alleged bankrupt on August 22, 1955, and an answer thereto having been filed, and the above entitled matter having been referred to the undersigned Referee in bankruptcy for determination, and having been duly set for hearing pursuant to notice on November 3, 1955, and having been adjourned from time to time in the taking of testimony and evidence, the petitioning creditors having appeared by Messrs. Craig, Weller & Laugharn, Thomas S. Tobin of counsel, and the alleged bankrupt having appeared in person and by his attorneys, Messrs. Grainger, Carver and Grainger, Adele Carver of counsel, and Patricia J. Hofstetter, and said trial having concluded on De-

cember 8, 1955, and the Referee having made and entered his findings of fact and conclusions of law, and being fully advised in the premises, now on motion of Messrs. Craig, Weller & Laugharn, Thomas S. Tobin of counsel, attorneys for the petitioning creditors, it is

Ordered, Adjudged and Decreed that John Collins, doing [19] business as Stan's Stage Coach Stop, be and he hereby is adjudicated a bankrupt within the purview of Section 4, Subd. (b) of the National Bankruptcy Act.

Done at Los Angeles, in the Southern District of California, this 16th day of December, 1955.

/s/ BENNO M. BRINK,
Referee in Bankruptcy [20]

[Endorsed]: Filed Jan. 5, 1956.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION FOR REVIEW OF ORDER OF ADJUDICATION

To the Honorable Leon R. Yankwich, Judge of the above entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby certify to the following:

John Collins, the bankrupt herein, has duly filed

his petition for the review of an Order made by your Referee in this matter on December 16, 1955, in which he adjudged the said Collins a bankrupt in an involuntary proceeding which had been commenced against him.

The Proceedings

This case involves a liquor license which Collins [21] owned and which it was asserted he transferred without consideration, on August 4, 1955. If such transfer was so made, and if at the time Collins was insolvent or if the transfer made him insolvent, there was committed a clear act of bankruptcy under section 3(a)1 of the Bankruptcy Act.

The case began by the filing of a petition in involuntary bankruptcy on August 22, 1955. On August 30, 1955, Collins filed his motion to dismiss the said petition. Thereafter, on September 6, 1955, an amended petition was filed. Collins filed an answer thereto on September 24, 1955, and thereafter the matter was heard before your Referee. At the conclusion of the hearing your Referee ruled that the amended petition had been sustained; that Collins had transferred the liquor license here involved, without consideration; and that at the time of the transfer he was insolvent.

Thereafter, counsel for the petitioning creditors submitted a draft of findings of fact and conclusions of law in the matter, and on December 14, 1955, Collins filed an exception thereto. Thereafter, your Referee rewrote a portion of the findings to

meet the exception which Collins had asserted, and on December 16, 1955, the findings of fact and conclusions of law were filed. On the same day an order of adjudication was entered, and it is from the said order that this review is taken.

The Questions Presented

The questions presented by this review are set forth in detail in the Petition for Review which is going up with this Certificate, but, in the opinion of your Referee, the said questions may be summarized as follows:

1. Did Collins transfer the liquor license here in question?
2. If Collins transferred the license, did he do so without consideration? [22]
3. If Collins transferred the license, and if he received no consideration therefor, was he insolvent at the time of the transfer?

The Evidence

The evidence in this matter will be found in the Reporter's Transcript of the proceedings which were had and in the exhibits, all of which are going up with this Certificate.

Referee's Findings of Fact, Conclusions of Law, and Order

The original of your Referee's Findings of Fact and Conclusions of Law in this matter is transmitted herewith. The original of the Order of Adjudi-

cation will be found in the Clerk's file in this proceeding.

Papers Submitted

The following papers are herewith transmitted:

1. Creditors' Involuntary Petition, filed Aug. 22, 1955.

2. Motion by Alleged Bankrupt to Dismiss Creditors' Petition, filed Aug. 30, 1955.

3. Creditors Amended Involuntary Petition, filed Sep. 6, 1955.

4. Answer of Alleged Bankrupt, filed Sep. 24, 1955.

5. Demand to Produce Documents, filed Nov. 10, 1955.

6. Exception To and Proposed Finding No. 1, filed Dec. 14, 1955.

7. Findings of Fact and Conclusions of Law on Involuntary Petition, filed Dec. 16, 1955.

8. Petition for Review, filed Dec. 27, 1955.

9. Reporter's Transcript of Testimony of John Collins, Sep. 6, 1955, filed Sep. 13, 1955. [23]

10. Reporter's Transcript of Proceedings of Nov. 4, 1955, filed Nov. 10, 1955.

11. Reporter's Transcript of Proceedings of Nov. 14, 1955, filed Nov. 21, 1955.

12. Reporter's Transcript (Partial) of Proceedings, December 5th, 6th, 8th, 1955, filed Dec. 19, 1955.

13. Exhibits—

Petitioning Creditors' Exhibits 1-10, inclusive.

Bankrupt's Exhibits 1-14, inclusive.

Respectfully submitted this 6th day of January, 1956.

/s/ BENNO M. BRINK,
Referee in Bankruptcy [24]

[Endorsed]: Filed Jan. 6, 1956.

[Title of District Court and Cause.]

ORDER REMANDING MATTER TO REFEREE

The Petition for Review of Order adjudicating the bankrupt a bankrupt having come on regularly to be heard on the 13th day of February, 1956 at the hour of 10 a.m. of said day before the Honorable Leon R. Yankwich, Federal Judge; Patricia Hofstetter and Grainger, Carver and Grainger (A. O. Carver, of counsel) appearing for the bankrupt and Craig, Weller & Laugharn (Thomas S. Tobin, Esq., of counsel) appearing for the petitioning creditors, and after hearing the argument of counsel, and it appearing to the Court that there is additional testimony, which is now available, now therefore, no adverse interests appearing,

It Is Ordered that the matter be and it is hereby remanded to Benno M. Brink, Referee in Bankruptcy, and said Referee is hereby instructed to hear the testimony of the wife of bankrupt and

such additional testimony as may be offered as to the circumstances under which the title to the real property now standing of record in the name of the wife of the bankrupt was carried, and said Referee is instructed to make such changes as he may desire in the findings to the Court and make the same, or such other ruling as he deems [25] proper.

Dated: This 27th day of February, 1956.

/s/ LEON R. YANKWICH,
District Judge

Approved as to Form
PATRICIA HOFSTETTER,
GRAINGER, CARVER AND
GRAINGER,
/s/ By A. O. CARVER,
Attorneys for Alleged Bankrupt

CRAIG WELLER & LAUGHARN,
/s/ By THOMAS S. TOBIN,
Attorneys for Petitioning Creditors

[Endorsed]: Filed Feb. 27, 1956.

[Title of District Court and Cause.]

MEMORANDUM UPON REMAND TO HEAR FURTHER TESTIMONY

On February 27, 1956, Honorable Leon R. Yankwich, Chief Judge of this Court, in proceedings then before him for the review of an order of adju-

dication made by this Referee in this matter, made an order remanding the matter to the Referee with instructions (1) to hear the testimony of the bankrupt's wife, and such additional testimony as might be offered with respect to certain real property involved in this proceeding, and (2) "to make such changes as he may desire in the findings to the Court and make the same, or such other ruling as he deems proper."

The Referee does not construe the order so made as an order reversing the order of adjudication. Rather, it is the Referee's opinion that it was the intent of the Chief Judge simply to remand the matter to the Referee, with leave [27] to take any action he might deem proper after hearing such further testimony as might be offered.

In his Findings of Fact in this matter the Referee found that the bankrupt was insolvent when he made a certain transfer hereinafter mentioned. In arriving at such finding the Referee had ruled that the real property occupied by the bankrupt and his family as their home was the separate property of his wife, and that he had no interest therein.

On March 14, 1956, the Referee heard further evidence in the case consisting of the testimony of Ada Collins, the wife of the bankrupt, with respect to the circumstances under which the title to the aforesaid property was taken in her name. The said testimony corroborated, in substance, the testimony previously given by the bankrupt that although title to the property was taken and remains in the name of the wife, that it was purchased with com-

munity assets, and that there never was any intention that it should be the wife's separate property. In other words, the testimony is that the bankrupt did not make a gift to the wife of the community assets which were used to purchase the property, and that the said property at the date of the said transfer was the community property of the bankrupt and his wife.

The Referee finds the aforesaid testimony of both the bankrupt and his wife to be entirely self-serving and unworthy of belief by this Court. We have here a flagrant situation. The bankrupt transferred a liquor license of a value of approximately $5,000.00 without any consideration whatsoever. If he was insolvent on the date of the transfer the order of adjudication in this case was proper. If he was solvent it was improper. If the property here in question was community property, the bankrupt was solvent; if it [28] was the separate property of the wife, as it is presumed to be under the provisions of Section 164 of California's Civil Code, he was insolvent.

It is obvious that John Collins does not want to be adjudged a bankrupt. Hence it served his purpose to testify as he did and it is the opinion of the Referee that the wife, in her testimony, simply went along with him.

We are concerned here with an item of property which has been placed beyond the reach of a Trustee in Bankruptcy by the recordation of a declaration of homestead. It would likewise be beyond the

reach of creditors outside of bankruptcy. Therefore, the bankrupt and his wife are perfectly safe and secure in testifying to facts which might support a finding that the property is community property. If any interest the bankrupt might have in the property would be non-exempt in this proceeding, or subject to the claims of creditors outside of bankruptcy, it is the definite opinion of the Referee that the testimony of the bankrupt and his wife would have been much different than it was.

It is the judgment of the Referee that there is no credible evidence to overcome the legal presumption of separate property on the part of the wife in this case. Hence the ruling in that connection heretofore made must stand, and the finding of insolvency must remain as it is.

Therefore, there is nothing for the Referee to do, save to certify the matter back to the Chief Judge for such further proceedings as may be appropriate in the matter.

Dated: March 28, 1956.

/s/ BENNO M. BRINK,
Referee in Bankruptcy [29]

[Endorsed]: Filed March 28, 1956.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE UPON REMAND TO HEAR FURTHER TESTIMONY

To the Honorable Leon R. Yankwich, Chief Judge of the United States District Court, for the Southern District of California:

I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above entitled matter is pending under an order of general reference do hereby certify to the following:

On February 27, 1956, your Honor in proceedings for the review of an order of adjudication made by your Referee in this matter, made an order remanding the matter to the Referee, with instructions (1) to hear the testimony of the bankrupt's wife, and such additional testimony as might be offered with respect to certain real property involved in this proceeding, and (2) "to make such changes as he may desire in the findings to the Court and make the same, or such other ruling as he deems proper." [30]

Pursuant to the said order your Referee heard further testimony in this matter on March 14, 1956, and, on March 28, 1956, he filed his Memorandum in connection therewith.

The purpose for which the aforesaid order of remand was made having been accomplished, your Referee now transmits to your Honor the following papers:

1. Memorandum upon Remand to Hear Further Testimony, filed March 28, 1956.

2. Reporter's Transcript of proceedings of March 14, 1956, filed March 27, 1956.

Respectfully submitted this 28th day of March, 1956.

/s/ BENNO M. BRINK,
Referee in Bankruptcy

[Endorsed]: Filed March 28, 1956. [31]

[Title of District Court and Cause.]

MEMORANDUM OPINION ON PETITION FOR REVIEW

Yankwich, Chief Judge.

On September 6, 1955, the amended involuntary petition was filed by certain creditors asking that John Collins doing business as Stan's Stage Coach Stop, be adjudged a bankrupt because while insolvent on or about August 4, 1955, he made or suffered a fraudulent transfer of his property under the provisions of Section 67 [11 U.S.C.A. §107] and Section 70 [11 U.S.C.A. §100] of the Bankruptcy Act. The alleged act of bankruptcy of which the Referee found the debtor guilty is stated in the Amended Complaint in this manner:

"That on or about August 4, 1955, and at

which time the bankrupt was insolvent, the bankrupt caused a transfer of a certain on sale general distilled spirits license to one Fred De Carlo without a fair consideration or without any consideration therefor, [34] and which thereby rendered him insolvent, which said on sale liquor license was and is of a reasonable and current market value of between $4500.00 and $5000.00; that said bankrupt completed the said transfer in so far as any act required of him to do in order to effectuate said transfer, in that on August 4, 1955, and within four months preceding the filing of the petition herein, the bankrupt filed with the California Department of Alcoholic Beverage Control an application for transfer of license duly executed by him and acknowledged before a Notary Public, whereby he transferred said liquor license to the said Fred De Carlo; that said transfer was thereby so far completed that neither the bankrupt nor a bona fide purchaser from him could obtain greater rights in said liquor license than the said Fred De Carlo."

The Referee found these to be true. [Findings III and IV.]

The facts other than insolvency need not detain us. For the entire dispute on review centers on the

finding of insolvency which is challenged as unsupported by the evidence.

After hearing the matter on review, it was remanded by the undersigned to the Referee on February 27, 1956, with direction to hear the testimony of the wife of the bankrupt and such additional testimony as may be offered as to the circumstances in which the real property, the family home, now standing in the name of the wife was placed in her name.

The Referee heard the additional testimony and [35] made his return which, in effect, states that he does not believe the testimony given by John Collins as to the circumstances in which the title to the home was taken in the name of the wife and that his position is not changed from that originally taken, because he is of the view that

> "the testimony of both the bankrupt and his wife to be entirely self-serving and unworthy of belief by this court."

The entire question of solvency turns upon the proposition whether the home occupied by the bankrupt and his family at Whittier, California, was the wife's separate property or not. The findings of the Referee, of course, must be accepted "unless clearly erroneous". [Federal Rules of Civil Procedure, Rule 52(a), General Order #47] However, if there is no substantial evidence to support it, a finding will not be sustained. [In re Leichter, 3 Cir., 1952, 197 F. 2d 955, 957]

The facts relating to the acquisition of the home are these: On December 7, 1951, the bankrupt's wife, Ada J. Collins, entered into an escrow agreement for the purchase of a residence in Whittier for the sum of $13,100. $5,154.00 in cash was to be paid into escrow. The title was to be vested in Ada J. Collins, a married woman. The testimony of the wife shows that she and her husband had recently arrived in California from the East, that they had been married since 1938, that she did not have money at the time of her marriage and earned none after. She opened the escrow and, as she stated:

> "It was a matter of convenience so that I could take care of things so that he could go back East to get the money."

Her husband went East to "get the money" because "they would [36] not take a personal check on an out-of-town bank." She does not claim to own the property now, nor has she ever claimed to own it as her separate property. On the contrary, she states:

> "We own it together. We don't own anything that way. What belongs to one belongs to the other. We just don't live that way."

The escrow and the deed both designate Mrs. Collins as "a married woman". The words usually put in when it is intended that property be in the name of the wife as her separate property are absent. The escrow clerk who testified at the hearings before the Referee, Temperance Bailey, stated that,

while she did not recall the conversation had with the Collins', it was general practice when the property is taken in the name of one of the spouses as separate property, to insert such a clause and that when this is done, a quitclaim deed by the other spouse is required. Her testimony reads:

"Q. When you request a policy of title insurance in that kind of a situation—where the title is to be vested in a married woman as separate property, do you transmit to the title company any papers in addition to the deed?

A. The deed would contain a clause that it was to be—was deeded to the one, the grantee, the property to be the separate property; but there would be an agreement on the deed, signed by husband and wife that it was to be the separate property of the grantee.

Q. In other words, your custom, then, would be that the husband would sign on the deed itself? [37]

A. Yes; either that or a quitclaim deed, in a separate instrument.

Q. The husband would execute a quitclaim deed?

A. It would be embodied in the instructions.

The Referee: Now, we have the instrument here, as petitioning creditors' exhibit No. 8; and the court finds nothing with respect to the

vesting of the title. You say it would be right on this instrument?

A. Yes."

The creditors' involuntary petition is not directed to the wife. Her testimony stands unimpeached. The facts testified to by the escrow clerk corroborate the wife's statement that this was to be their joint home, was bought from their savings during their married life and that it was not the intention to vest the title in her as her separate property.

The Civil Code of California provides:

"* * * whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing, the presumption is that the same is her separate property, * * *" [California Civil Code, §164]

The presumption is rebuttable. [Wilson v. Superior Court, 1951, 101 C.A.(2) 592, 595] At all times, the intention of the parties at the time governs. And what the courts consider sufficient in one case to prove that the property was community property may not be so considered in others. The California Reports are full of cases on the subject. Illustrative of the view which requires strong proof to [38] overcome the presumption of the deed is Kimbro v. Kimbro, 1926, 199 Cal. 344. At the other end are cases in which the property was held to be community property notwithstanding the fact that it was bought with the separate earnings of one of the sponses. [Estate of Piatt, 1947, 81 C.A.(2) 348,

350-351; Frymire v. Brown, 1949, 94 C.A. (2) 334, 339-340; Geller v. Geller, 1953, 115 C.A.(2) 822, 825]

In all cases of this character, in determining the intention of the parties, the fact that the parties had been married for a long time, that the property was purchased with community funds, and was intended "as home" has great weight. [In re Carlin, 1912, 19 C.A. 168] In the case before us, there is no evidence that at the time of arrival at Whittier in 1951, the husband intended to go into any particular business or that the possible failure in the business was thought of as a means of protecting against failure. So, admitting that Collins' actions in the case justify the Referee in not giving credence to his testimony, that condition does not exist as to the wife. I do not believe we can dispose of her testimony by saying that she

"simply went along with him."

California law does not sanction the old common-law theory that husband and wife are one, so as to exclude or attain the wife's testimony. [People v. Nesseth, 1954, 127 C.A.(2) 712, 717] And the common law which forbade one spouse from testifying for or against the other in an action in which either has an interest has long been abandoned. [See, 58 Am. Jur., Witnesses, §§175-190] So the modern American woman is not supposed to be under her husband's "compulsion" when she testifies for him in an action at law. The disqualification of interested parties as witnesses [39] has not existed in California since 1863. [See, Jones v. Post, 4 Cal.

14; Gibson v. Kennedy Extension G. Min. Co., 1916, 172 Cal. 294, 305.] Nor does it exist at the present time anywhere else in the United States, [58 Am. Jur., Witnesses, §159]

It is the rule of the federal courts that uncontradicted testimony may be disregarded if there are in it inconsistencies, or inherent improbabilities or facts contradict it. [Quock Ting v. United States, 1891, 140 U.S. 417, 420-421; Grace Bros. v. C.I.R., 9 Cir., 1949, 173 F. 2d 170, 174] But when such testimony is not inherently improbable or deficient in other respects, it cannot be disregarded merely because given by an interested party. [Chesapeake & Ohio Ry. v. Martin, 1931, 283 U.S. 209, 215-216; Pence v. United States, 1942, 316 U.S. 332, 339-340; Nicholas v. Davis, 1953, 10 Cir., 204 F. 2d 200, 202; San Francisco Ass'n for the Blind v. Industrial Aid, 8 Cir., 1946, 152 F. 2d 523]

The case last cited epitomizes the rule in a manner that is very appropriate to the problem before us. There the question was whether the unimpeached testimony of a witness could be arbitrarily disregarded. In answering in the negative, the Court said:

> "The credibility of Mrs. Quinan was not questioned. Her testimony was not impeached or contradicted. It cannot be disregarded. Chesapeake & Ohio R. Co. v. Martin, 283 U.S. 209, 217, 51 S. Ct. 453, 75 L. Ed. 983" [San Francisco Ass'n for the Blind v. Industrial Aid, supra, p. 536]

Nicholas v. Davis, supra, states the rule when the sole ground for rejecting the testimony is interest in this manner: [40]

> "When controlling, positive and uncontradicted evidence is introduced, and when it is unimpeached by cross-examination or otherwise, is not inherently improper, and no circumstance reflected on the record casts doubt on its verity, then under the principles laid down in Chesapeake & Ohio Ry. Co. v. Martin, 283 U.S. 209, 215-220, 51 S. Ct. 453, 75 L. Ed. 983, it may not be disregarded even though adduced from interested witnesses." [Nicholas v. Davis, supra, p. 202]

Here the estate was created years before the bankruptcy by persons who were recent arrivals in California, were not familiar with our property laws, and from earnings of the husband who, with his wife, was anxious to establish a home in California for his family. In the circumstances, the bare presumption arising from Section 164 of the California Civil Code is overcome by the uncontradicted fact that the property was purchased with community funds as a home, and was placed in the wife's name "for convenience" only. It is true that the property is homesteaded and is beyond reach of the creditors. But the Bankruptcy Act recognizes homestead rights and other exemptions under state law. [Bankruptcy Act, Sec. 6, 11 U.S.C.A., Sec. 24]

Indeed, it makes it the duty of the Trustee to

> "set apart the bankrupt's exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment." [Bankruptcy Act, §47(6), 11 U.S.C.A., §75(6)]

The homestead may be carved out of community property or out of separate property of each of the spouses. [California [41] Civil Code, §1238] When a wife converts her separate property into community property, she loses many of the rights which are incident to her separate ownership, such as nonliability for the husband's debts and the right to convey the property without the consent of the husband. [California Civil Code, §§162, 171] By contrast, if the property were community property, the husband would have the right of management. [California Civil Code §172(a)] In view of this, it cannot be said that the interest of the wife was such that she stood to gain so much by an adjudication that the property was community property, that her testimony should be rejected. In the light of the facts stated, if, as the Referee says, the wife "went along", with the husband's version of the transaction, the inference is inescapable that she did so because it was her and her husband's intention to hold their home as community property.

We should not retroject to 1951 the "delinquencies" of the husband in this bankruptcy so as to impeach the integrity of a property purchase consummated in 1951, long before the husband failed

in business,—a purchase which was intended to establish a home for the family of the debtor with the savings of thirteen years of married life. It is conceded that if to the assets are added the equity in the house, the alleged bankrupt is not insolvent.

It follows that the Referee was wrong in declining to consider the value of this equity in determining the matter and that his finding of insolvency is clearly erroneous.

The Order of the Referee is reversed.

Dated this 18th day of May, 1956.

/s/ LEON R. YANKWICH,
Chief United States District
Judge [42]

[Endorsed]: Filed March 16, 1956.

In the United States District Court, Southern District of California, Central Division

No. 67977-Y

In the Matter of JOHN COLLINS, dba STAN'S STAGE COACH STOP,

Alleged Bankrupt.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF JUDGE REVERSING ORDER OF REFEREE ON REVIEW

The petition of John Collins, bankrupt above named, for review of the order of Benno M. Brink, Referee in Bankruptcy, made and entered in the

above entitled proceedings, entitled "Order Adjudging Alleged Bankrupt to be a Bankrupt" dated the 16th day of December, 1955, having come on duly for hearing after remand on the 14th day of May, 1956, at the hour of 10:00 o'clock in the forenoon of said day, before the Honorable Leon R. Yankwich, District Judge, in his Court Room in the Federal Building, Los Angeles, California, at said hearing, Craig Weller & Laugharn (Thomas S. Tobin, Esquire, of counsel) appearing for the petitioning creditors, and Patricia Hofstetter and Grainger Carver and Grainger (Adele O. Carver, of counsel) appearing for the alleged bankrupt, and after hearing the arguments of counsel, and taking the matter under submission, and being fully advised in the premises, the Court makes its Findings of Fact, Conclusions of Law and Order as follows:

Findings of Fact

I. [43]

The alleged bankrupt has resided at 10423 East Townley Drive, Whittier, California, and within the Southern District of California, for a longer portion of the six months immediately preceding the filing of the involuntary petition herein than in any other judicial district, and that until on or about December 21, 1954, he was engaged in the retail liquor business at 13113 South San Antonio Avenue, Norwalk, California, and within the Southern District of California; that in the operation of said liquor business said alleged bankrupt incurred

liabilities which remain unpaid and are now due and owing.

II.

The alleged bankrupt at the date of the filing of the petition herein on August 22, 1955, was indebted to the Acme Distributing Co. in the sum of $417.00 on open account; to the California Beverage and Supply Co. in the sum of $955.00 on open account, and the Young's Market Co. in the sum of $242.70 on open account, none of which accounts have been paid.

III.

The real property situate at 10423 East Townley Drive, Whittier, California, being the property in which the alleged bankrupt resides, was purchased with community funds of the alleged bankrupt and his wife, Ada Collins, and is community property of the alleged bankrupt and his wife. Title to said property was taken in the name of Ada Collins, the wife of the alleged bankrupt, for convenience only. The alleged bankrupt and his wife did not intend, and there was no intention on their part, that said property become the separate property of the wife. The value of the equity of the alleged bankrupt and his wife in and to said real property is $6000.00, and such equity is a portion of the assets to be taken into consideration in determining the solvency or insolvency of the alleged bankrupt.

IV.

The alleged bankrupt was not insolvent on the 4th [44] day of August, 1955. On August 4, 1955,

the alleged bankrupt was the owner of a general distilled spirits license issued in his name and of a reasonable market value of approximately $5000.00. On said date the alleged bankrupt filed with the Alcoholic Beverage Control of the State of California an application to transfer said liquor license to one Fred De Carlo without consideration. Said application to transfer is still pending.

V.

The alleged bankrupt was not insolvent on the 22d day of August, 1955, the date of the filing of the involuntary petition in bankruptcy against him. At said time all of his assets, including property which would be exempt under the laws of the State of California, but excluding said distilled spirits license, taken at a fair valuation, total in value the sum of $13,068.75, and the alleged bankrupt's total liabilities as of the date of the filing of the involuntary petition against him amounted to, and do now amount to, the sum of $8867.23.

Conclusions of Law

Based on the foregoing Findings of Fact, the Court makes the following conclusions of law:

I.

The alleged bankrupt was solvent on the 4th day of August, 1955, and was solvent on the 22d day of August, 1955, and did not commit the alleged act of bankruptcy, or any act of bankruptcy, and should not be adjudged a bankrupt.

II.

The petitioning creditors have not sustained the burden of proof required of them under Section 3 of the Bankruptcy Act, and the alleged bankrupt should not be adjudged to be a bankrupt.

Order

Wherefore, It is Ordered, Adjudged and Decreed that the order of the Referee dated the 16th day of December, 1955, adjudging [45] the alleged bankrupt to be a bankrupt be, and the same hereby is reversed, and the Order of Adjudication entered pursuant thereto be, and the same hereby is vacated and set aside, and the alleged bankrupt be, and he hereby is decreed to be not bankrupt.

Dated this 3rd day of July, 1956.

/s/ LEON R. YANKWICH,
District Judge

PATRICIA HOFSTETTER,
GRAINGER, CARVER AND
GRAINGER,

/s/ By A. O. CARVER,
Attorneys for Alleged Bankrupt [46]

Affidavit of Service by Mail Attached. [47]

[Endorsed]: Filed July 3, 1956. Docketed and Entered July 5, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Acme Distributing Company, California Beverage & Supply Co. and Young's Market Company, petitioning creditors herein, do hereby appeal from the order of Honorable Leon R. Yankwich, United States District Judge, reversing the order of Honorable Benno M. Brink, Referee in Bankruptcy, which adjudicated the alleged bankrupt, John Collins, to be a bankrupt, and from the findings of fact and conclusions of law on which said order was based.

Said appeal is taken to the United States Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 10th day of July, 1956.

CRAIG, WELLER & LAUGHARN,
/s/ By THOMAS S. TOBIN,
Attorneys for Appellants [48]

[Endorsed]: Filed July 10, 1956.

[Title of District Court and Cause.]

POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL

The appellants herein hereby specify the points on which they intend to rely on appeal in the United States Court of Appeals for the Ninth Circuit:

Point I.

That the District Judge erred in reversing the order of the Referee which adjudicated the bankrupt to be a bankrupt.

Point II.

That the District Judge erred in not confirming the order of the Referee which adjudicated the bankrupt to be a bankrupt.

Point III.

That the District Judge erred in attempting on a cold record to evaluate the credibility of the testimony of the bankrupt and his wife as to the value of the bankrupt's homestead, and in finding that the bankrupt's assets exceeded his liabilities, and in reversing the order made by the trier of fact, the Referee, who had seen the witnesses, heard them testify and [51] judged their credibility.

Dated this 10th day of July, 1956.

CRAIG, WELLER & LAUGHARN,
/s/ By THOMAS S. TOBIN,
Attorneys for Appellants [52]

[Endorsed]: Filed July 10, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of Cali-

fornia, do hereby certify that the foregoing pages numbered 1 to 52, inclusive, contain the original

Order of General Reference;

Creditors Amended Involuntary Petition;

Stipulation Extending Time to Answer;

Answer of Alleged Bankrupt;

Findings of Fact, Conclusions of Law on Involuntary Petition;

Order Adjudging Alleged Bankrupt to be a Bankrupt;

Referee's Certificate for Review of Order of Adjudication;

Order Remanding Matter to Referee;

Memorandum Upon Remand to Hear Further Testimony;

Referee's Certificate upon Remand to Hear Further Testimony;

Notice of Hearing on Petition to Review after Remand;

Memorandum Opinion on Petition for Review;

Findings of Fact, Conclusions of Law and Order of Judge Reversing Order of Referee on Review;

Notice of Appeal;

Designation of Parts of the Record on Appeal;

Points on Which Appellants Intend to Rely on Appeal;

which, together with 5 volumes of reporter's transcript and Creditor's exhibits 1-10, inclusive and bankrupt's exhibit 1, all in the above-entitled cause, constitute the transcript of record on appeal to the

United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the foregoing record amount to $2.00, which sum has been paid by appellant.

Witness my hand and seal of the said District Court this 16th day of August, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,
/s/ By CHARLES E. JONES,
Deputy

District Court of the United States, Southern District of California, Central Division.

Bankruptcy No. 67,977-Y

In The Matter of JOHN COLLINS, dba Stan's Stage Coach Stop.

REPORTER'S TRANSCRIPT

Tuesday, September 6, 1955.

Before Hon. Benno M. Brink, Referee

Appearances: For Receiver: Craig, Weller & Laugharn, by Thomas S. Tobin, Dorothy Kendall. For John Collins: Patricia J. Hofstetter. [1]*

JOHN COLLINS

being first duly sworn, testified as follows:

The Referee: Will you state your name?

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Testimony of John Collins.)

A. John Collins.

Q. What is your address?

A. 10423 East Townley Drive, Whittier.

Q. Do you have a telephone number?

A. Oxford 97663.

Q. Are you in business at 13113 San Antonio Avenue, Norwalk? A. Not at this time.

Q. Are you in business at any place? A. No.

The Referee: All right; go ahead.

Examination

Q. (By Mr. Tobin): When did you cease doing business at 13113 San Antonio Avenue, Norwalk?

A. Approximately September, 1954.

Q. And what were the circumstances under which you closed that business?

A. Well, there was a dispute between myself and Lefringhouse. He said he was taking the business over.

Q. And you were engaged in the retail sale of liquor? A. That is true.

Q. And cafe? A. A cocktail bar, yes.

Q. Did you have a stock in trade on hand at the time of this dispute? [2] A. Yes, sir.

Q. Open bottles?

A. Yes, sir; some open and some closed.

Q. What became of them?

A. Lefringhouse took the balance and put them in his liquor store. I got a few of the full bottles and some of the partially-full bottles.

Q. And where does this man Lefringhouse live?

(Testimony of John Collins.)

Miss Kendall: He is right here in the court room, and I will produce him at any time.

Q. (By Mr. Tobin): And with regard to the full bottles that you took, where did you take them to? A. I put them in my garage.

Q. And about how many bottles were there and what do they contain?

A. I never assorted them as to fullness; but they contain whisky, wine, beer—any kind of alcoholic beverage.

Q. Approximately how many bottles of whisky were placed in your garage?

A. That would be awful hard to estimate. I would take a guess at maybe 50 or 60 bottles; it could be 40 or 30; but there was beer mixed in with it. There were all kinds.

Q. I was going to take each liquor separately. About how many bottles of whisky?

A. I could not tell you—I really and truly could not tell you. [3]

Q. Is it still there? A. Some of it.

Q. What has become of the rest?

A. I drank a little of it.

Q. Outside of what you drank?

A. It is there in the garage.

The Referee: The question is—have you sold any? A. No, sir.

Q. Have you given any away?

A. There is parties and stuff—I invite people to my home.

(Testimony of John Collins.)

Q. Have you given any of it away to people to take away?

A. At Christmas time I think I did, a bottle or two as Christmas presents.

Q. (By Mr. Tobin): When did you put it in the garage? A. It was in December.

Q. 1954? A. That's right.

Q. And it has remained in your garage ever since?

A. Some of it I drank; the balance of it is in the garage.

Q. I am not trying to hold you to any that you personally consumed in your own family.

A. It is in the garage.

Q. It has not been in any place of business after December, 1954? A. No.

Q. It has not been in your place of business, where [4] you yourself conducted a business since December, 1954?

A. The portion I received has not been; it has been in my garage.

Q. About what would you say is the value of that liquor that is in your garage?

A. I don't know; it would be hard to estimate because it is in bottles of whisky and beer—they are not much different in size but there is in the cost. I really could not tell you the estimated cost.

Q. Would you say $500? A. No.

Q. Four hundred dollars?

A. It could be, but I would doubt it.

(Testimony of John Collins.)

The Referee: I don't think the witness is in position to answer that question.

Q. (By Mr. Tobin): How long have you lived in southern California?

A. As a permanent address, about October, 1951, I think.

Q. Did you ever live in New York?

A. I did.

Q. When?

A. Well, I was born there—that is New York State.

Q. Did you ever live in New York City?

A. No.

Q. Did you ever live in Niagara Falls, New York? A. I did.

Q. Did you have a bank account back there?

Miss Hofstetter: Objected to unless he gives us a foundation. [5]

The Referee: Well, on August 22, 1955, when this petition was filed, did you have a bank account in Niagara Falls, New York?

A. I don't believe so. If there was one there it would have less than five dollars. There could be one. We drew the money out a long time ago, when we moved here; but it seems to me—I thought the account may have—there is still a few cents in the account. We would not know the exact amount of the balance.

Q. When did you make the last substantial withdrawal from the bank account in Niagara Falls?

A. I would say about 1953.

(Testimony of John Collins.)

Q. What was the name of the bank?

A. There were several—Power City Trust Company; Niagara Permanent Savings & Loan Association. I think I had a small account in the Manufacturers & Traders Trust, but if there was it was small.

Q. Were those in Niagara Falls?

A. Yes; they were there before I moved.

Q. I would like to identify the place; is the City called "Niagara Falls"? A. Yes.

Q. In what name or names were those accounts kept? A. "John A. Collins."

Q. Anyone else? A. No.

Q. Are you a married man?

A. My wife could have been. I would not know. [6] Very likely it could be "Eda J."

Q. Were any of those accounts in the name of any business?

A. At the time of August 22, 1955?

Q. Yes. A. No.

Q. (By Mr. Tobin): Did you make any deposit in those accounts after you came out here?

A. I really could not say; it has been a long time, and I don't recall any.

Q. Were those checking accounts or savings accounts?

A. Well, offhand, I would say they were checking accounts.

Q. Were those accounts active after you came out here, except from the withdrawal that you have already testified to?

(Testimony of John Collins.)

A. I withdrew several times when I first came out here.

Q. Do you have your bank books?

A. No; I don't.

Q. Do you know where they are?

A. Well, when they are empty there is no sense in saving them. I don't know whether I have them. As I say, I don't recall keeping them.

Q. When did you last receive statements from any of those banks? A. It was a long time ago.

Q. What do you mean?

A. It was way back before 1955, a long time before. [7] Maybe 1952 or 1953.

Q. Approximately what balance did you have in those accounts in 1953?

The Referee: I don't think that is material at this time in light of the alleged bankrupt's answer. Let's go on to something else.

Q. (By Mr. Tobin): Now, outside of the liquor that you have in your garage and whatever balance is in your bank accounts in Niagara Falls, what other property do you have?

A. Well, there is a dispute about the bar fixtures, whether I own them or Stan Lefringhouse. They are still on the premises at 13113 San Antonio Drive, Norwalk.

Q. What are they worth?

A. Well, the fixtures themselves are worth about $5000 or $7000.

Q. And are they still in a leased building?

A. No.

(Testimony of John Collins.)

Q. Is there provision in the lease that you know of that they revert to the landlord in the event you are in default in your rent?

A. Not in any lease that I signed.

Q. Who is in possession of that place of business at the present time?

A. Lefringhouse, I believe. He is here in the court room.

Q. Now, at the time that you took that liquor out had you had some kind of settlement with Lefringhouse? A. No. [8]

Q. How did it happen you removed the liquor from the place of business and put it in your garage?

A. Well, in closing the place, he contended that he owned everything; and operating on my liquor license and my fixtures and everything; and walking off with all the money; and so the only thing I could do was to close it.

Q. Did you buy the bar fixtures?

A. It was my money. The bar was made out of material; it was not purchased in a store as a unit or anything.

Q. Who transacted the purchase of the material of the bar fixtures?

A. Some of them I did and some of them Stan Lefringhouse did.

Q. And with whom did you deal?

A. Well, it just depends on what you bought. The beer boxes and stuff like that, the company we bought the beer from.

(Testimony of John Collins.)

Q. Did you buy it? A. I bought it.

Q. You bought it yourself? A. Yes.

Q. Was there an escrow?

A. An escrow on the beer boxes?

Q. On any of the fixtures.

A. Not that I know of.

Q. When you started up? A. No.

Q. When you closed up did you contend that you and he were partners?

A. I did. I presumed that we had better go and see the [9] judge and let the judge decide.

Q. And there is litigation pending on whether or not there was a partnership?

A. That is right.

Q. But you individually have at least several hundred dollars worth of liquor in your garage?

A. Well, there is liquor there; I don't know what the value is. There is liquor—beer and wine, vodka—generally about every alcohol beverage you could think of.

Q. Will there be any difficulty in the receiver going out there and making an inventory?

A. No, as long as he let me know when he is coming.

The Referee: That is reasonable.

Mr. Tobin: Yes. Have you had the automobiles up until recently?

A. Well, in my possession, yes.

The Referee: Tell us about the cars?

A. Here is the thing—in 1951, before I moved here—it was I think—I am not sure—October, or

(Testimony of John Collins.)

in September, my wife bought a new car—a 1951 Chrysler at that time; and I bought a new Buick about two months later. We came here and still have the Chrysler, but the Buick I sold, I think, in 1952, shortly after I came here; and since then I have purchased a Ford.

Q. Let us take the Ford—in whose name was that purchased?

A. I believe it was either mine or my wife's.

Q. You don't know? [10]

A. I don't know—or both.

Q. It is driven by both of you?

A. It is driven by my boy—my son.

Q. Is it clear? A. No; I owe the bank.

Q. About how much do you owe on the Ford?

A. About $700—for a guess—The Bank of America.

Q. Where? A. Whittier.

Q. Is that money you borrowed on it?

A. Yes.

Q. It was not part of the purchase price?

A. No; it wasn't.

Q. You got some money on it after you bought it? A. Yes.

Q. In whose name is the Chrysler registered?

A. "Eda J."

Q. In your wife's name? A. Yes.

Q. Does she claim it as her own?

A. Well, the situation was—I was going to buy her a cheap car; and her father said he would put in the extra money to buy her a good car.

(Testimony of John Collins.)

Q. In any event she claims it as her own?

A. She says it is.

Q. Is there anything owing on it?

A. Well, they are both on the same loan with the Bank.

Q. The Ford and the Chrysler?

A. That's right.

Q. Is there anything else included in that loan?

A. For collateral, or anything? [11]

Q. Yes. A. No.

Q. Are there any other cars in your family?

A. The boy got a $15 "heap" the other day.

Q. Outside of the "heap" there is no other car?

A. No.

Q. Is there any other car that any member of the family drives habitually? A. No.

Q. (By Mr. Tobin): Now, referring to this loan that you made at the Bank, did you sign the note for the loan? A. I really don't know.

Q. Did your wife? A. I believe she did.

Q. What branch of the Bank?

A. The Bank of America on Philadelphia and Greenleaf. It is right on the corner there.

Q. By the way, do you own any real estate?

A. I don't know whether I do or not—the house I live in.

Q. Do you have any real estate back in Niagara Falls? A. No, sir.

Q. Standing in any one else's name? A. No.

Q. Do you have a brother back in Niagara Falls by the name of "Lawrence?" A. No.

(Testimony of John Collins.)

Q. Do you have a brother by the name of "Lawrence?" A. Yes.

Q. Where is he? A. California.

Q. Is there any property back in Niagara Falls standing in his name that actually belongs to you?

A. No.

Q. Do you have any property back in Niagara Falls, [12] New York, in anybody else's name?

A. No.

Q. In which you claim an interest?

A. No. I don't know—now—my father died just recently—about 18 months ago, and there is something about the will—the way it was written—my mother got everything, but there is a house in which they lived, and it was his wish that—I can't quote it exactly—but anyway, if the mother died first and he died last, the house would go to the "kids"; and in the event he died first that mother should have the house until she died; but it was his wish that the house be divided among the "kids." I suppose eventually there is something, but right now I would say it was my mother's.

Q. (By the Referee): What was your father's name? A. Charles M.

Q. Where did he die? A. Niagara Falls.

Q. Did he leave a will?

A. I never have seen it, but that is what mamma said.

Q. You don't know whether it was probated?

A. No; this is just what I heard from my mother.

(Testimony of John Collins.)

Q. Outside of any possible interest you might have in the family house, is there any real estate of any kind anywhere in which you claim an interest outside of California?

A. No, nothing, no bank, no money.

Q. In whose name is your home standing?

A. Eda J. Collins.

Q. Is your name on it? A. No. [13]

Q. Does she claim it as her own property, do you know?

A. Well, she says it is. I don't know. We bought it in 1951, when we came here.

Q. Is it clear? A. No.

Q. How much is against it?

A. I couldn't tell you, for a guess, it is about $4000 to $7000—somewhere in that area.

Q. What was the original price, approximately?

A. "12-2," I think, or "12-3."

Q. Has anyone declared a homestead on the property?

A. My wife, I think—I think she did, when she bought the house.

Q. Is there any other real estate anywhere in California in which you claim any interest whatsoever? A. No.

The Referee: Go ahead.

Q. (By Mr. Tobin): Now, going back to this Niagara Falls property that you referred to as the "house," was that a dwelling house or apartment house?

(Testimony of John Collins.)

A. Just a plain, one-family house. My mother lives in there now.

Q. Do you own an apartment house? A. No.

Q. You own no interest and claim no interest in an apartment house in Niagara Falls?

A. That is correct. I don't claim any.

The Referee: Where did somebody get the idea, because it is very evident they did, that you might have some interest [14] or claim some interest in an apartment house in Niagara Falls?

A. I will tell you what it is all about—Mr. Forrest, sitting on my right—is of the opinion I must have a bunch of money back in Niagara Falls; and we have been wrangling back and forth in the courts about this liquor bill here; and I guess he just wanted to find out, between himself and Miss Kendall; and they figure that now is a good time to get me upon the stand and ask.

Q. And where did they get the idea you had an apartment house? A. I did have at one time.

Q. How long ago?

A. It was in the forties—I believe in '46 or '47.

Q. What did you do with it?

A. I sold it when I came out here.

Q. Does it still have a trust deed or mortgage on it?

A. No; it is all done—I have no attachment to it or anything.

Q. (By Mr. Tobin): Are you operating a juke box route at the present time? A. No.

(Testimony of John Collins.)

Q. You make no collections on a juke box route at all?

A. I have gone around with fellows; I know a lot of juke box operators.

Q. The question is—are you making any collections? A. No. [15]

Q. Are you getting any percentage or anything of that kind out of it?

A. No percentage interest or value or anything, no.

Q. Who are the fellows you go out with?

A. M. B. Connor; I have gone out with my brother; I could name 50 or 100 I am familiar with.

Q. (By The Referee): What is your present business or occupation?

A. Well, last December I had a back injury, and I was laid up—I had a disk removed in my back this past June, 1955; and after getting away from the hospital, they told me I would not be able to go to work for several months; and I am just now getting close to being able to go to work.

Q. Do you now have any business? A. No.

Q. Are you now employed?

A. I am not employed, but I expect to be soon.

Q. Do you have any source of income?

A. Well, yes; I get $35 a week from some place—from an insurance—disability.

Q. Do you have any other source of income?

A. Yes; there is another one that pays me insurance when I am out of work. One pays me $25; and another pays me $20.

(Testimony of John Collins.)

Q. Have you any other?

A. Not that I know of.

Q. Has any member of your family any source of income? A. Those I just told about? [16]

Q. Now. How many children do you have?

A. I have three.

Q. Are they working?

A. My oldest one just quit to go back to school. He was working. He is an apprentice plumber.

Q. The others are younger?

A. I got a daughter; she does a little baby-sitting, but she keeps the money for herself.

Q. Is your wife employed? A. No.

The Referee: All right; go ahead.

Q. (By Mr. Tobin): Are you engaged in money-lending?

A. Not at this time. I have loaned a little money.

Q. Approximately how much do you have out on loans at the present time?

A. That would be an awful hard question to answer because I would have to think of the people. I would guess maybe $2000.

Q. Do you have notes from them?

A. Well, no; I will tell you—you don't get a note when you loan a guy ten or twenty dollars.

Q. (By The Referee): What was the largest amount of money you have loaned to any individual that has not paid you back?

A. I think that it is $184 at the present time.

Q. Do you have any notes from anybody?

(Testimony of John Collins.)

A. I don't believe so—no, sir.

Q. Do you have any security for any of these loans?

A. Well, like on that one I was referring to—$100 or whatever it was—I just wrote on the check when I gave him the money "personal loan."

Q. Have you got any mortgage or stocks?

A. No.

Q. No securities? A. No, sir.

The Referee: All right; go ahead.

Q. (By Mr. Tobin): Do you have a license to loan money to act as a money-lender?

A. I don't do it as a business—if a guy wants to borrow.

Q. Just as a matter of accommodation?

A. That's right; just like I would go to somebody and ask for $5 or $10.

Q. When was the last time you made a loan?

A. It has been a long time; many months ago.

Q. (By The Referee): Before you quit the business down there?

A. I would say it was before.

Q. (By Mr. Tobin): To sum the whole thing up—the only property that you have is the liquor that is in your garage; your interest in the liquor license, whatever it may be; and the interest in your family home back in New York, Niagara Falls, whatever that may be—is that [18] right?

A. Well, I don't know. You talk about interest I have in the liquor license. It just depends on whether there is an interest there. The State Board

(Testimony of John Collins.)

says it is a privilege. Some people would say it is an asset. I consider it somewhat as a liability. It costs a dollar a day to keep it.

Q. Have you parted with it?

A. No; I have to the State board; it is not transferred yet.

Q. (By The Referee): In whose name was that license issued? A. John A. Collins.

A. Any other name? A. No.

Q. Did you pay the annual beverage or license fee on that license for 1955? A. Yes, sir.

Q. When did you pay that?

A. Well, I think around about the first of the year.

The Referee: Go ahead.

Q. (By Mr. Tobin): And you executed a transfer of that license?

A. With intent to transfer, yes.

Q. Last August—last month?

A. Yes; last month.

Q. Do you contend that Mr. Lefringhouse has an interest in that license or that it is your own?

A. I figured it is best to let the judge decide it.

Q. What is your contention—that it is yours?

A. I did not give it much thought. It was in my name—I suppose I would have control of it, yes.

Q. Now, at the time that you executed the transfer to the State Liquor Control Board, you were owing your creditors, were you?

The Referee: I am sorry. I am not going to let you go into that. I am not entirely satisfied

(Testimony of John Collins.)

you can use 21a in lieu of a deposition.

Mr. Tobin: I think your Honor is right.

Q. Outside of this car, this liquor, your interest in the fixtures, and the possibility of an interest in the real property in Niagara Falls, New York, is that all the property that you have, other than what you mentioned here in Los Angeles?

A. That is all I can think of at the moment.

Q. Have you any bank account here?

A. There might be one in the Bank of America. If there is there isn't much of anything in it.

Q. That is where? A. Whittier.

Q. On Philadelphia?

A. The other one is located at Broadway and Washington.

Q. In Whittier?

A. Yes. I thought it might be at Rivera. [20]

Mr. Tobin: I think that is all.

The Referee: All right. That is all, Mr. Collins.

(Witness excused.)

The Referee: That is all for today.

[Endorsed]: Filed Sept. 13, 1955. [21]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

November 4, 1955

Appearances: For Receiver: Craig, Weller & Laugharn, by Thomas S. Tobin. For John Collins: Grainger, Carver & Grainger, by Adele O. Carver, Patricia J. Hofstetter. [1]

W. J. RYAN

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. I am credit manager and office manager of Acme Distributing Company of Pasadena.

Q. One of the petitioning creditors here?

A. Yes.

Q. Do you know the alleged bankrupt, John Collins?

A. No, I don't, that is, I have not met him personally. I have talked to him over the phone.

Q. Did your company have any dealings with him within the last two years? A. Yes.

Q. At what address?

A. I would have to get it—it was at 13113 San Antonio Street, Norwalk.

Q. Is that a bar? A. Yes.

Q. Between what dates did your company have dealings with Mr. Collins?

A. Our first charge to him was on the 14th of May, 1954, and the last one on December 16, 1954.

Q. What was that? [2]

A. It was for whisky, spirits, some of the merchandise we handle. We are wholesale liquor dealers.

Q. Has that bill been paid in its entirety?

A. No. There is still one open invoice, December 16th, a charge of $265.69. Then we have a returned check—the last check $151.89 was returned

(Testimony of W. J. Ryan.)

against this account. I believe the total was $410.00 or $420.00, or some such figure.

Q. What is the balance due?

A. The total, these two, $417.58.

Q. Your company is a California corporation?

A. That's right.

Mr. Tobin: You may cross-examine.

Cross Examination

Q. (By Mrs. Carver): Do you have the original purchase orders?

A. I do not have the original purchase orders. I have duplicate copies.

Q. What is the practice with your company? Does the customer sign an order or what do you have?

A. He doesn't sign an order, no. Orders are either telephoned in or given to a salesman; and when delivery is made an invoice must accompany the merchandise, which the customer signs.

Q. Do you have your delivery slips with you?

A. Yes, I do. [3]

Q. Mr. Ryan, would these indicate that these deliveries were made to 13113 San Antonio Street, Norwalk? A. Yes.

Q. The signature, would that indicate the parties who sign for the receipt of those articles?

A. Yes.

Q. You would not be able at present to say whether or not these people were connected with John A. Collins?

(Testimony of W. J. Ryan.)

A. I couldn't say, except in this way—that the merchandise was delivered to this address, and the people representing Mr. Collins obviously signed for it at that address.

Q. You would not know the parties themselves?

A. No, I had nothing to do with the deliveries.

Mrs. Carver: That is all.

Redirect Examination

Q. (By Mr. Tobin): Did Mr. Collins ever dispute this balance? A. No, he didn't.

Q. Did he ever acknowledge he owed it?

A. I have a notation on my ledger card of a telephone call which Mr. Collins made to me on the 2nd of January, this year, 1955. He asked me, first, what the balance was, which I told him; and he said, then, that he was having a little dispute with Mr. Lefringhouse [4] over their business, and he said the account would be taken care of as soon as the matter was straightened out, and that an attorney would be writing us about it.

Mr. Tobin: That is all.

Mrs. Carver: That is all.

(Witness excused.)

CHARLES A. WRIGHT

a witness, being first sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. Credit Manager and Office Manager of the California Beverage and Supply Company.

(Testimony of Charles A. Wright.)

Q. Is that a California corporation?

A. It is.

Q. Has your company had any dealings during the past four years with the alleged bankrupt, John Collins? A. We have.

Q. At what address?

A. 13113 San Antonio Drive, Norwalk.

Q. What kind of business is that?

A. A cocktail bar.

Q. What was the nature of the dealing you had [5] with the alleged bankrupt?

A. Various orders for distilled spirits.

Q. Between what dates?

A. Between the date of June 5, 1953, and November 5, 1954.

Q. What was the total amount, in value, of merchandise sold to him during that period of time?

A. I have not got the total of the charge.

Q. Could you tell the balance?

A. The balance is $955.16.

Q. Has any portion of the balance been paid?

A. No.

Q. Is it on open account? A. It is.

Q. Did you send any bills to Mr. Collins for that merchandise? A. Yes.

Q. And has he ever disputed the bill until this particular bankruptcy was filed? A. No.

Q. Did he ever acknowledge that he owed it to you? A. Yes, he has.

Q. In what way, and when?

A. I will qualify that slightly—he acknowledged

(Testimony of Charles A. Wright.)

he owed—the biggest part of it, I would say, [6] not any definite amount, but with any settlement or agreement he would look out for us.

Mr. Tobin: You may cross examine.

Cross Examination

Q. (By Mrs. Carver): Do your records show who ordered the merchandise?

A. No, our system is, the salesman takes the orders or they are phoned in directly from the customers, and the salesman writes up the order, but the customer does not sign any order.

Q. Do you have the delivery slips with you?

A. I have.

Q. Would you know or recollect the various parties who signed for the receipt of this merchandise?

A. Not personally. I would know some of the parties who have signed, for instance, this is Lefringhouse, and Norine Lefringhouse, the wife of Stanley Lefringhouse, who was manager of the bar, and some others. There is one that looks like Mr. Collins' own signature. I am not positive, because I am not a writing expert—they sign by John Collins and Lefringhouse, I believe—I am not sure about the writing. I could not swear to it.

Mrs. Carver: That is all.

Redirect Examination [7]

Q. (By Mr. Tobin): Under what name do you carry this account? A. John A. Collins.

(Testimony of Charles A. Wright.)

The Referee: Does the name Stan's Stage Coach Stop appear anywhere on your account?

A. No.

The Referee: Any other questions?

(There being no further questions, the witness was excused.)

J. WALTER PHELPS

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. Credit Manager of Young's Market Company, Los Angeles Division.

Q. Is Young's Market a California corporation?

A. Yes.

Q. Located and doing business in Los Angeles?

A. That is correct.

Q. What is the nature of its business?

A. Wholesale liquor, the division I am representing.

Q. Do you know Mr. John Collins?

A. I do not. [8]

Q. Did Young's Market Company have any business dealings with one John Collins during the four years last past?

A. During those years, yes, sir.

Q. What did those business dealings consist of?

A. The sale of alcoholic merchandise.

Q. To what address?

A. 13113 San Antonio, Norwalk, California.

(Testimony of J. Walter Phelps.)

Q. And was there any fictitious firm name or style used in connection with it?

A. On one there is Stag's Stage Coach Stop; and on the other it is Stan's.

Q. Was that an open account? A. Yes.

Q. Is there any balance due on it?

A. Yes. We have two invoices, totaling $242.70.

Q. Remaining due, owing and unpaid?

A. Yes.

Q. Have you billed Mr. Collins at that address for that balance?

A. Yes; the invoices were delivered with the merchandise — that is, the extent of the billing. However, semi-monthly statements have been mailed to that address.

Q. Has there ever been any denial until the [9] petition in bankruptcy was filed by three petitioning creditors, including your company?

A. There has been no denial that I know of.

Mr. Tobin: You may cross-examine.

The Referee: What are the dates of the unpaid invoices?

A. We have one August 18th, 1953, in the amount of $28.86; the second, October 5, 1953, $213.84.

Cross Examination

Q. (By Mrs. Carver): Do your invoices show who received the merchandise?

A. I have delivery copy signatures, yes, ma'am.

Q. Would you know whether or not these pur-

(Testimony of J. Walter Phelps.)

chases were connected with the Collins' business?

A. I have no knowledge whether they were or are or ever have been.

Mrs. Carver: That is all.

Q. (By the Referee): Are these the only two transactions you had with this man?

A. No; there were others, but they have been liquidated.

Q. Were they later or prior?

A. The liquidated transactions were prior.

Q. But you do not have anything now which would indicate who paid the prior obligations? [10]

A. I do not have any evidence here. We might be able to find it through our invoice records.

Q. What would they be?

A. Usually we keep an exact transcript of every check going through our organization; and we would have to go back and find out when a particular check might have been given to us for one of the previously paid invoices, and then trace it down.

Q. What would that show?

A. It would show the party who signed the check.

The Referee: Any other questions?

(There were no further questions and the witness was excused.)

RALPH MEYER

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. Receiver, Trustee, Assignee, handling a lot of assets in the liquidating field.

Q. Have you handled the transfer of any liquor licenses in the last year? A. Yes, I have.

Q. Are you familiar with the value of liquor licenses, transferring from the present holder of a [11] value to a transferee? A. Yes, I am.

Q. Are you familiar with the value of liquor licenses, or were you, on or about August 4, 1955?

A. Yes.

Q. In the City of Los Angeles? A. Yes.

Q. And what would you say would be the value of an "on sale" liquor license at or about that period of time?

A. Between $4,500.00 and $5,000.00.

Mr. Tobin: You may cross-examine.

Cross Examination

Q. (By Mrs. Carver): Mr. Meyer, are you familiar with Rule 65 of the Alcoholic Beverage Control Act? A. Yes, I am.

Q. Could you explain to us just what the rule is?

A. That pertains to the surrendering of a license, is that the one?

Q. Yes.

A. The rule provides that where a business is

(Testimony of Ralph Meyer.)

discontinued for more than ten days, the license must be surrendered to the State Board of Equalization until an application is made to transfer the license to a new licensee. In other words, if a business is discontinued [12] for more than ten days, you have to surrender your license.

Q. Now, is it your understanding that at the expiration of the six months' period of time that then the license is lost?

A. Under the new rule that has been put into force and effect, you can only surrender the license for a six-months' period.

Q. Would you say with that in mind that within a period of from ten days to two weeks before the license would become inactive that a license would have a value of $4,500.00?

A. Yes, it would, for this particular reason—you have until the expiration of the six months in order to effect a transfer, in other words, the six months' period expires; but it does not expire if you make a transfer within that particular period.

Q. If a transfer was not made or no steps taken to transfer the license, and if it loses its effect in ten days, what would you say would be the value of the license?

A. That is rather difficult, because there would be negligence on the part of the person for not trying to sell during the ten-day period, but it would still have value, because you still have ten days to make an application for transfer. [13]

Q. Would you say it would have as much value

(Testimony of Ralph Meyer.)

during that ten-day period as it might have with more time?

A. I cannot see any reason why it would affect the value of the license, for this particular reason—the license is good until the expiration of the ten days; and if you make an application on the ninth day, the license would still be good, and you would be able to get the market value.

Q. But you could not say whether or not it would have that market value?

The Referee: The answer is that it would have the same value up to the expiration of the six months' period. Is that correct?

A. That is correct.

Mrs. Carver: That is all.

(There being no further questions, the witness was excused.)

Mr. Tobin: At this time we would like to offer in evidence a certified copy of Notice of Intention to Transfer of Liquor License from John A. Collins to Fred de Carlo.

The Referee: It will be Creditors' Exhibit No. 1. [14]

ROSCOE Z. MATTHEWS

a witness, having been first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. I am the liaison officer between the Depart-

(Testimony of Roscoe Z. Matthews.)

ment of Alcoholic Beverage Control and the Board of Equalization.

Q. Where is your office?

A. 357 South Hill Street.

Q. Do you have with you the records of the Alcoholic Beverage Control pertaining to an application for transfer of liquor license from John Collins to Fred de Carlo? A. I do.

Q. Will you state to the Court what records you have brought with you?

A. I brought the complete file of Collins and also the file of de Carlo.

Q. Now, I will ask you whether or not you have in your records any certified copy or copies of Notice of Intention to Transfer Liquor License from John Collins to Fred de Carlo?

A. I don't have one with me presently. It goes directly to Sacramento.

Q. Do you have with you the application for a transfer? [15] A. I do.

Q. And do you have any other additional copies of it? A. No.

Q. May I ask that you let the Court examine it.

The Referee: Has counsel seen it?

Mrs. Carver: No, I haven't, your Honor.

A. This is the application. This shows whether it was transferred from Collins to de Carlo; this is merely a fingerprint affidavit.

Q. Calling your attention to the back of the application by transferer, which reads as follows: "The undersigned hereby makes application to sur-

(Testimony of Roscoe Z. Matthews.)

render all interest in the attached license described below." That was on license of "on-sale," general "P," file No. 13,276; license No. P-9355-B, double transfer, "P." Location—13113 San Antonio Drive, Norwalk, out, L. A. County, Cal. To transfer the same to the applicant and/or location indicated on the reverse side of this application, if such transfer is approved by the Director. It is signed, "John A. Collins." I will ask you to state whether or not there were any further steps necessary insofar as John A. Collins is concerned to effectuate a transfer of that license, so far as he is concerned?

A. Not so far as Collins is concerned. [16]

Q. What steps would have to be taken to vest a title to that license in the name of the transferee?

A. It would depend on the rules of the Department of Alcoholic Beverages Control, such as, whether or not Collins' record were such that they would allow the transfer.

Q. Would there be anything more for Collins to do? A. Not for Collins.

Mr. Tobin: May I ask the Court to examine this?

The Referee: The application is a printed form, headed, "Application for Transfer of Alcoholic Beverage License." It contains the information read by counsel for the petitioning creditors. It appears to be dated August 5, 1955. The effective date is given as 7-1-55." It appears to have been verified on August 4, 1955. It contains the notation—"Sacramento under Rule 65." The application for trans-

(Testimony of Roscoe Z. Matthews.)

fer is signed, "Fred de Carlo." The application by transferer is signed "John A. Collins." What is the present state of this transaction, Mr. Matthews?

A. Well, sir, at the present time it is being held in Sacramento, and the only thing I can tell you is what I have here. There is a report, on what we call the license report, it says that issuance under Section 24,044, license to be held pending certified report, confirming compliance with a bona fide restaurant. In [17] other words, it is State law that a "P" license can only be used for a bona fide restaurant. So far as I know, that has not been complied with. Until such time the Department will not issue a license. It will remain in the transferer's name, and if it is surrendered, why, if it is not used within six months, it will automatically die; but since there was a transfer already made, if he complies and puts in a bona fide restaurant, there is a possibility it will be transferred; but I cannot tell you exactly what the Board will do at Sacramento. I don't know.

The Referee: Are there any other questions?

Mr. Tobin: That is all.

Cross Examination

Q. (By Mrs. Carver): Mr. Matthews, could Mr. Collins at any time before the actual transfer and approval of the transfer of that license by the Alcoholic Beverage Control Board have withdrawn his application?

A. From the date that was notarized and went

(Testimony of Roscoe Z. Matthews.)

through the cashier's window, so far as he was concerned, he had given permission for the transfer, that is, of his own action. It may revert back to him, but it could not be because he decided that he wanted to rescind.

Q. At any time before the transfer could any [18] interested party protest the transfer of that license? A. That is true, it can be.

Q. Anybody in interest can do that?

A. That's right.

Q. Do you have in those files an application signed by Mr. Collins in January, 1954, as to the transfer of the license to a Mr. Litchenfeld?

A. The application would have been in Litchenfeld's file.

Mr. Tobin: That would be immaterial.

The Referee: Objection sustained.

Mrs. Carver: Your Honor, the purpose of this is to show the procedure that was handled by Mr. Collins withdrawing his application, in similar circumstances to this, and the Board having cancelled it.

The Referee: That is a question of law, Mrs. Carver. The witness has given us his impression of existing law, that once the application, or transfer, is presented, duly signed by the transferer and the transferee, there can be no withdrawal. However, it is the Court's responsibility to determine the law in that kind of a situation, even if the Board permitted something to be done on a previous occasion, that would not permit them, or require them, to do

(Testimony of Roscoe Z. Matthews.)

something of a similar nature on a subsequent date.

(There being no further questions, the witness was excused.) [19]

JOHN A. COLLINS

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): Were you ever in business? A. Yes, sir.

Q. Where? A. At what time?

The Referee: Let us get down to the point. What about this business at Norwalk? Did you ever own it?

A. I did.

Q. Did you own the liquor license there?

A. I did.

Q. And did you on August 4, 1955, make an application to the Alcoholic Beverage Control Board for a surrender value of an interest in that license, a transfer to Fred de Carlo?

A. I made an application of transfer to Fred de Carlo, yes.

Q. What did you do with the license?

A. I didn't do anything.

The Referee: I think it is stipulated that the license has been on deposit with the Alcoholic Beverage Control Board under Rule 65, is that correct?

Mrs. Carver: Yes.

Q. (By Mr. Tobin): What did Mr. de Carlo pay you for that license? [20]

(Testimony of John A. Collins.)

A. Nothing.

Q. What is it worth?

A. It just depends on how you look at it. I don't know what it is worth. Some people consider it an asset, some people consider it a liability, other people consider it a privilege.

Q. What do you consider it?

A. I would say, for one, it is a privilege.

Q. And worth how much on August 4, 1955?

A. We don't consider it in money, do we?

The Referee: I am sorry, gentlemen, you are getting us nowhere. You have evidence in the record that the license was worth from $4,500.00 to $5,000.00.

Q. (By Mr. Tobin): Now, in addition to that liquor license, as of August 4, 1955, what other property did you own?

A. On that same date?

Q. Yes.

A. My attorney has got a list of it.

Q. Your counsel has handed me what purports to be a statement of assets and liabilities, listing real property, lot 19, tract 16,868, valued at $15,000.00. Is that your residence?

A. That is true.

Q. In whose name does title to that property stand? [21]

A. I believe it is my wife's.

Q. And cash in possession of yourself, $1,500.00. What date did you have $1,500.00 in cash, in your possession?

(Testimony of John A. Collins.)

A. I would say I had approximately that amount on August 4th.

Q. What is this statement, as of——

A. August 4th, I believe——

Mrs. Carver: Your Honor, I object. He is trying to prove insolvency at the date of the alleged transfer. I don't believe it is an element.

The Referee: What is it?

Mrs. Carver: This is his position, that at the date of the filing of involuntary petition.

Mr. Tobin: All right, we will get the date of the filing of the involuntary petition.

The Referee: August 22nd, 1955.

Q. (By Mr. Tobin): On August 22, 1955, this real property stood in your wife's name, is that right? A. Yes.

Q. Did you have $1,500.00 in your possession on August 22, 1955?

A. I would say "yes," approximately.

Q. William A. Wylie was appointed the Receiver on or about that date?

A. I believe there was a receiver appointed——

Q. You were called on by the Receiver, and you told him your assets, did you not?

A. Not that I know of.

Q. Did you tell him, the Receiver, you had $1,500.00 in your personal possession at that time?

A. He didn't ask me.

Q. I am asking if you told him that.

A. I never seen Mr. Wylie; I don't remember of seeing him.

(Testimony of John A. Collins.)

Q. Did one of Mr. Wylie's representatives call on you? A. Yes, about three days ago.

Q. Not before? A. No.

Q. You had a stock of whisky stored in the garage, valued at $400.00? A. Approximately.

Q. As of the date at the filing of the petition?

A. I would say approximately, yes.

Q. Was that whisky ever picked up by the Receiver? A. No.

Q. Or anyone representing him? A. No.

Q. You put under "furniture" the cost, $4,000.00. [23] That was what it cost you?

A. That is approximately what I paid for it.

Q. How long ago did you buy it?

A. I bought it since 1952, 1953, or 1954,—I would say those three years, during those years.

Q. What was the furniture worth on the 22nd of August, 1955?

A. It was worth as much as I paid for it, if I had to replace it.

Q. It is still worth $4,000.00?

A. I presume so.

Q. This unliquidated claim for $3,500.00, what is the nature of that unliquidated claim?

A. It is a compensation deal. I was injured here last December; I was in the hospital in June for a disk operation; and the compensation people wanted to settle with me.

Q. Did you accept the settlement? A. No.

Q. The matter is still unliquidated?

A. Yes, still pending. They just made offers.

(Testimony of John A. Collins.)

Q. Cash surrender value of life insurance policy, $17,000.00, what is the company?

A. Various companies, the Metropolitan Life, Columbia National, United States Government Insurance.

Q. How much of the cash surrender value for [24] each one of the policies?

A. The total, roughly, around $1,700.00.

Mrs. Carver: You have the policies right there.

Q. (By Mr. Tobin): You list 1000 phonograph records. Are records a dollar apiece?

A. I believe about 98c, some $1.15; some $1.25.

Q. A 1952 Ford car. A. Yes.

Q. $600.00. In whose name does that stand?

A. I don't know whether in my wife's or mine; I really couldn't tell you.

Q. And you have got a claim for damages in connection with an injury to your son?

A. Yes.

Q. That is for your son's injuries?

A. That is correct.

Q. And that is unliquidated, also?

A. I would say so.

Q. And you have tools, $1,000.00?

A. Approximately.

Q. What kind of tools?

A. Hand tools—wrenches, saws, power tools, an electric saw, a metal cutter, and various things like that that I used in my trade.

Q. What is your trade? [25]

A. I am a steamfitter.

(Testimony of John A. Collins.)

Q. And you claim an interest in money held in escrow, in the amount of $3,000.00. Where is that escrow?

A. It is at the Vista Escrow Company; it is on Atlantic Avenue, but I think they have moved their office to Wilshire Boulevard.

Q. What claim do you lay to that?

A. I sold the bar to Harry Litchenfeld, in, approximately, January, 1954; and it was under the condition that in the event—Litchenfeld was going to take immediate possession—in the event he had any violation with the State Board of Equalization, he was either to come up with the full amount of money or surrender the $3,000.00, and return the place.

Q. Did you get the $3,000.00?

A. From all I know it is supposed to be down in the escrow.

Q. Did you ever lay any claim to it?

A. Yes, I did.

Q. What did you do to get hold of this $3,000.00?

A. I didn't go down yet.

Q. You have had creditors after you, have you not, suing you for claims that you owe?

A. No; they are suing me under the claim that I owe.

Q. You have had a number of judgments taken [26] against you in the Municipal Court, have you not?

A. Not that I know of. There was one, I believe.

(Testimony of John A. Collins.)

Q. Now, you had a suit against you in the Municipal Court, Los Angeles Judicial District, Case No. 273,742, entitled Interstate Credit Service, Inc. vs. Collins, in which a judgment was rendered by Judge Newell Cairns on September 7, 1955, in the sum of $229.64, didn't you? A. That is true.

Q. Did you pay that judgment?

A. It has been since the bankruptcy filed.

Q. You owed that bill at the time you claimed you had this $3,000.00 coming out of escrow, and this $1,500.00 cash in your possession, did you not? You owed this bill? A. They claimed I owed it.

The Referee: It is argumentative. Proceed. He admits the judgment was entered.

Q. (By Mr. Tobin): You had another judgment rendered against you in Case No. 271,363, in the Municipal Court, in favor of the Interstate Credit Service, Inc., in the sum of $182.96, on September 7, 1955, by Judge Cairns?

A. It is the same one, yes, sir.

Q. And you had another judgment rendered [27] against you in the Municipal Court, being Case No. 264,333, in the sum of $351.43, is that right?

A. I believe they were all combined into one case.

Q. What steps did you take to pay those bills before they sued and reduced the claim to judgment?

Mrs. Carver: I don't believe that has anything to do in this case.

Mr. Tobin: It is a question of insolvency.

(Testimony of John A. Collins.)

The Referee: Objection sustained.

(Discussion.)

Q. (By Mr. Tobin): These bar fixtures in Norwalk you list at $7,000.00. Were they encumbered?

A. You mean is there any indebtedness against them?

Q. Yes. A. There could be.

Q. How much?

A. I would not know that.

Q. Approximately how much?

A. I couldn't even take a guess at it.

Q. You don't know?

A. Well, I understand that Mr. Lefringhouse put a chattel mortgage against them, and I don't know whether he actually paid or not.

Q. You put them in as an asset? [28]

A. Yes. I feel they are of the value of $7,000.00.

Q. And you don't know what there is against them?

A. There is nothing against them that I can recall, right at the moment.

Q. (By The Referee): Let us clear that up—you don't pretend to own those fixtures at this time, do you? Are they not the ones you sold?

A. You mean to Litchenfeld?

Q. Yes. A. That escrow never went through.

Q. But you claim as an asset $3,000.00 of money that is in the escrow? A. Yes.

Q. Either you got the $3,000.00 or you got the fixtures back, is that not right?

A. No, the agreement was with Litchenfeld that

(Testimony of John A. Collins.)

he was to surrender the $3,000.00 and give it back if he put the license into jeopardy; and it did not go through.

Q. So that if he does not go through with the deal you will get the $3,000.00, is that right?

A. I get the $3,000.00 and fixtures back.

Q. Well, assuming he has put a mortgage on the fixtures? [29]

A. You have two mortgages—one to Litchenfeld and one to Lefringhouse.

Q. What is the distinction?

A. Lefringhouse was a manager of mine and Litchenfeld was the man that was going to buy the bar from me.

Q. Are you saying that the manager might put a mortgage on it?

A. That is correct. That is where this argument has been, about these whisky bills. Litchenfeld, the fellow that was going to buy the bar on January 18, 1954, the whisky bills that were paid was purchased from this company—Harry Litchenfeld buys part of the whisky when he took it over. I gave to Stan Lefringhouse approximately between $1,500.00 and $1,800.00, in that area, with no accounting of the $1,500.00 to $1,800.00, that is, the whisky, but all this disputing has been as to whether Lefringhouse had the right to sell the whisky and take it and not produce. What he did with the money or why he did not pay for the whisky is what the deal was there.

(Testimony of John A. Collins.)

Q. What was the name of this man you sold to?

A. Litchenfeld.

Q. You sold Litchenfeld? A. That is true.

Q. That is the deal that was in the escrow? [30]

A. It was.

Q. Isn't it there now?

A. I guess it is still pending, the money is supposed to be there; it is still open, yes.

Q. Did he go into possession?

A. He did, as of January 18th or 20th, 1954.

Q. Have you retained possession since that time?

A. That is true. May 11, 1954, I took it back.

Q. You took it back? A. Yes.

Q. You took it back on May 11, 1954. Now, what is the name of that manager?

A. Stanley Lefringhouse. He is present in the courtroom.

Q. Now, you owned the place after May 11, 1954?

A. Well, at that time Stan and I were going to become partners.

Q. Who is "Stan?"

A. Stanley Lefringhouse—he and I were going to become partners, and we were going to form a corporation, and which we did. We proceeded to do that as of some time in July, we started the corporation, but he never wanted to finish it; and, so, he comes up and tells me, "What are we? Are we partners?" Is it a partnership? Does he own it? [31]

Q. You took it back from Litchenfeld?

(Testimony of John A. Collins.)

A. Yes.

Q. Did you actively manage the business yourself, then? A. May 11th?

Q. Yea. A. No.

Q. Have you at any time actively managed this business since May 11, 1954? A. No.

Q. You have not? A. No—Lefringhouse.

Q. Now, was there a liquor license in use in those premises? A. Yes, sir.

Q. And who was the holder of that license?

A. John Collins—myself.

Q. Is that the same license that you allowed to be transferred to de Carlo? A. Yes.

Q. Is that the same license which you impounded with the Alchoholic Beverage Control?

A. That is true.

Q. How long did Lefringhouse operate the business after May 11, 1954?

A. Until I closed it up. [32]

Q. When did you close it?

A. December, 1954.

Q. Has the business been operated in that location since that time?

A. No, not to my knowledge.

Q. Well, let us go back a little bit again. You owned the business when you arranged to sell it to Litchenfeld, is that correct? A. Yes, sir.

Q. Litchenfeld did not complete the bargain and you took it back, is that right?

A. That is true.

Q. Did you have any papers of and kind show-

(Testimony of John A. Collins.)

ing that you transferred that business to a corporation or to a partnership, any papers?

A. If there are any papers in existence, they would be in Mr. Snyder's office—he is an attorney in Los Angeles that formed the corporation. He told me the last time I saw him that everything has been completed in the corporation except transferring the assets.

Q. Do you know whether there was ever any transfer of the assets?

A. I don't believe there was.

Q. Now, was there a liquor license involved in the deal with Litchenfeld? A. Yes. [33]

Q. Is that the same license we are still talking about? A. That is true.

Q. Was that license ever transferred to Litchenfeld? A. Yes.

Q. That is the one you withdrew?

A. That's right.

Q. So that there never was a transfer?

A. No.

Q. Well, do you want the Court to understand that someone other than yourself could be operating this business after May 11, 1954, and who used this license in doing so?

A. Well, you mean insofar as Lefringhouse is concerned?

Q. No. Let me make my question clear. The license was still in your name on and after May 11, 1954, and remained in your name until you took steps to transfer it to de Carlo and in the meantime

(Testimony of John A. Collins.)

you deposited the license with the Alcoholic Beverage Control Board? A. Correct.

Q. Therefore, during the period from May 11, 1954, to December, 1954, or thereabouts, a liquor dispensing business was in operation at this address, and the only license that you had was the license which was issued in [34] your name, is that correct?

A. Yes, that is true, "on sale." There is a liquor store in the same building.

Q. You had nothing to do with that? A. No.

The Referee: Well, the fixtures appear to me to be the property of Mr. Collins. Now, whether there was any encumbrance on the fixtures, that, of course, is something we don't know about.

Q. (By Mr. Tobin): Do you know whether they are encumbered?

The Referee: He has already answered the question—he does not know whether Mr. Lefringhouse put a mortgage on or not.

Q. (By Mr. Tobin): Showing you this list of liabilities that your counsel handed me, what are the addresses of these people that you list as creditors? A. The address of each person?

The Referee: What is the purpose of the question?

Mr. Tobin: I will withdraw it. Taking up the first item, encumbrance on real property, $6,800.00, did you and your wife both sign the promissory note on the encumbrance on the real property?

A. I believe so.

(Testimony of John A. Collins.)

Q. And the encumbrance on your car, did both sign it? [35] A. I believe so.

Q. Now, the sales tax of $676.50, that was incurred in the operation of this business that you have been talking about? A. That is correct.

The Referee: What is the amount of the sales tax?

Mr. Tobin: $676.50.

A. That is an estimate, not an exact figure.

Q. Then, United States taxes are approximately $2,000.00. They were incurred in connection with that business? A. They claim that.

Q. The Norwalk Lumber Company, $105.00, is that correct?

A. I believe that is what the bill reads.

Q. "Brew 102, $61.01. Was that incurred in connection with that business?

A. That is what they told me.

Q. And Rheingold, $33.54, was that incurred in that business? A. The same.

Q. Now, Von Ronkle, $351.43, was that incurred in that business? A. The same.

Q. Duffield, $229.64, was that incurred in that business? [36] A. The same.

Q. H & Z Distributing Company, $182.96.

A. The same.

Q. Young's Market, $242.70? A. The same.

Q. You deny under oath that you owed Young's Market any money at all?

A. I said that is what they claim.

Q. Do you owe them or don't you?

(Testimony of John A. Collins.)

A. There are disputed bills; but when I talked to my attorney, Mrs. Carver, she said, "What is the worst possible picture of indebtedness that they could possibly put forward, whether you owe them, or whether you saying you owe them or you don't owe them?" Do you understand what I mean? That is what I said—I said that is what they claim.

Q. You claim you don't owe Young's Market anything? A. That is correct.

Q. What about the Acme, you have listed them here, $417.00. A. The same answer.

Q. California Beverage, $955.16.

The Referee: The same answer.

A. I think the Judge answered that one.

Mr. Tobin: It might be well to offer this list of [37] liabilities in evidence. It would be more convenient than going through the whole list.

The Referee: All right. Petitioning Creditors' No. 2.

(At this point a recess was taken after which the following proceedings were had:)

Q. (By Mr. Tobin): Mr. Collins, when did you acquire the fixtures in this liquor business?

A. Which part of them, or all of them?

Q. The fixtures you claim in this list of assets, $17,000.00, I believe it is, when did you acquire them?

A. In 1953 and 1954, those two years.

Q. From whom did you acquire them?

(Testimony of John A. Collins.)

A. It depends as to which item you are referring to.

Q. What fixtures were there in this bar?

A. Well, there was a bar box and a cooler—that came from Perlick.

Q. All of them?

A. No, there were different items from different places.

Q. From whom did you acquire these items of fixtures? A. Some of them were made.

Q. By whom? [38]

A. We hired help to make them, such as a carpenter.

Q. Take the fixtures as a whole, from whom did you buy those fixtures, exclusive of those you had made?

A. Some from Stanley Lefringhouse.

Mr. Tobin: May I see the affidavit of this witness in connection with the application for the liquor license?

Q. Showing you an affidavit sworn to before a notary public on January 12, 1953, I will ask you if that is your signature on there, "John A. Collins"? A. I would say it is.

Q. And that affidavit was delivered to the State Board of Equalization in connection with an application for liquor license, was it not?

A. Well, yes, that is true. That is January, 1953.

Q. Now, is this statement in this affidavit true, "is buying nothing" applying for a new "P" license?

(Testimony of John A. Collins.)

A. As of January, 1953, that is true.

Q. You were buying nothing?

A. That is true.

Q. When did you buy the fixtures, then, after that?

A. I would say about April or May.

Q. Since January, 1953, were you leasing the premises? [39] A. No—that very date?

Q. Yes.

A. I believe I was, but I wouldn't be sure of the exact month.

Q. What about the truth or correctness of this statement in this affidavit, "Applying for new 'P' license and leasing the premises furnished from present licensee, Stanley E. Lefringhouse who holds 'A'"? A. That is true.

Q. You bought the fixtures from Stanley Lefringhouse after that? A. That is true.

Q. What did you pay him for them?

A. I don't remember the exact amount.

Q. Approximately?

A. Well, I gave him a total amount, I guess, of $3,500.00 or $4,500.00.

Q. Is this statement true that is contained in this affidavit of application, "Are you the sole owner of this business?" Then "Not at present, will take over the business if and when a new license is issued." Is that true? A. It is very possible.

Q. Who was the other owner of the business?

A. The previous owner was Stanley Lefringhouse. He ran a beer bar in the place. [40]

(Testimony of John A. Collins.)

Mr. Tobin: Now, I am returning this affidavit to the witness Matthews.

Q. Now, you were examined in this court, under oath, on September 6, 1955. Do you recall that?

A. I do.

Q. Now, do you recall my asking you with regard to the assets that you had as follows:

"Q. (By Mr. Tobin): To sum the whole thing up—the only property that you have is the liquor that is in your garage; your interest in the liquor license, whatever it may be; and the interest in your family home back in New York, Niagara Falls, whatever that may be, is that right?

"A. Well, I don't know. You talk about interest I have in the liquor license. It just depends on whether there is an interest there. The State Board says it is a privilege. Some people would say it is an asset. I consider it somewhat as a liability. It costs a dollar a *year* to keep it."

Q. Did you so testify, under oath?

A. May I see it?

Q. Yes. [41] A. Correct, property——

Q. I am just asking you if you answered it that way under oath.

A. Yes, I believe I did, similar to that.

Q. Now, then, you were asked:

"Q. Outside of this car, this liquor, your interest in the fixtures, and the possibility of an interest in the real property in Niagara Falls, New York, is that all the property that you have, other than what you mentioned here in Los Angeles?

(Testimony of John A. Collins.)

"A. That is all I can think of at the moment."

Was that question asked you and did you so testify? A. I believe I did.

Q. What was the interest in the fixtures you claimed at that time when you were examined here under 21-A of the Bankruptcy Act, on September 6, 1955?

A. The interest in the bar fixtures.

Q. What was it?

A. What was it in amount?

Q. Yes, what was the interest you claimed in those fixtures?

A. I really don't recall. It was just a thumb amount, if there was an amount given at all. [42]

The Referee: You cannot ask what he testified on that date. The rule is you have got to show him the transcript and ask him if he did so testify.

Mr. Tobin: I did. I am asking what interest he claimed.

The Referee: Then, that is in the transcript.

Q. (By Mr. Tobin): How long have you lived in Los Angeles?

A. About four years, I would say.

Q. Continuously?

A. Well, I have been away, out of the state.

Q. I mean, your residence is in Los Angeles County?

A. I have had an address in Los Angeles County, I would say, continuously for four years.

Q. You have made your home here in Los Angeles County, State of California, for the last four

(Testimony of John A. Collins.)

years, have you? A. I would say so.

Q. And all of your activities were confined to business in Los Angeles, or Los Angeles County?

A. I would say so, the general area of Los Angeles. It was not necessarily always in the County.

Q. But south of Fresno County?

A. I don't know where Fresno County is.

Q. Do you know where Fresno is? [43]

A. It is up near Bakersfield, north?

Q. It was all south of Bakersfield?

A. Yes.

Q. And north of the Mexican border?

A. Yes.

Mrs. Carver: This seems to be immaterial.

The Referee: It is all very interesting from a geographical standpoint, but it is not getting us anywhere.

Mr. Tobin: It is in respect to allegation No. 1, residence in the district, Southern District of California.

The Referee: Does that allege he is not a resident of Southern California?

Mrs. Carver: I don't believe we denied that allegation.

Mr. Tobin: I thought everything was denied except the Notice of Intention.

The Referee: He denies that he had any place of business within said period, that is all.

Mr. Tobin: Well, I want to establish residence.

The Referee: You are not relying on residence, you are relying on principal place of business.

(Testimony of John A. Collins.)

Mr. Tobin: I am going to ask the Court for leave to amend.

The Referee: Until the amendment is here, you cannot ask. Any other questions? [44]

Mr. Tobin: That is all.

The Referee: Do you have any questions at this time?

Mrs. Carver: Not at this time.

Q. (By Mr. Tobin): One other question — do you know Harry McDonald?

A. The name does not "ring a bell." I could possibly know him but I don't believe I do.

Q. Do you know William D. Smith?

A. I doubt very much if I do.

Mr. Tobin: That is all.

(There being no further questions, the witness was excused.)

STANLEY E. LEFRINGHOUSE

a witness, being first duly sworn, testified as follows:

The Referee: What is your name?

A. Stanley *D.* Lefringhouse.

Examination

Q. (By Mr. Tobin): What is your occupation?

A. Right now, my wife and I are co-partners in a liquor store, we own a liquor store together.

Q. Do you know the bankrupt, John Collins?

A. I do.

Q. Did you ever have any personal property of

(Testimony of Stanley E. Lefringhouse.)

[45] any kind in the property known as 13113 San Antonio Avenue, Norwalk?

A. Any personal property?

Q. Yes. A. Yes, I did.

Q. Consisting of what?

A. All furniture and fixtures, all the decorations, chairs and tables—kitchen.

The Referee: Briefly you owned the business, is that right?

A. I owned all the furniture and fixtures, yes, and the lease.

Q. (By Mr. Tobin): Did you ever sell to this bankrupt? A. No, I did not.

Q. Did you ever manage a business at that address for this bankrupt? A. Yes, I did.

Q. Between what dates?

A. Approximately April or May, 1953, to January 18, 1954,—May 11, 1954 to December 23, 1954.

Q. Do you know Harry McDonald?

A. Yes, I do.

Q. What did he do?

A. He was a bartender.

Q. At that address? [46]

A. Yes, 13113 San Antonio.

Q. Do you know William D. Smith?

A. Yes, "Smitty," he was a bartender at 13113 San Antonio.

Q. Were they working under your direction?

A. Yes, they were working for Mr. Collins, under my direction.

Q. Now, during the time that you were manager

(Testimony of Stanley E. Lefringhouse.)

there did you have occasion to sign delivery receipts for liquor? A. Yes, I did.

Q. For the liquor?

A. That's right. Then we would put those in the register; Mr. Collins has seen the receipts many times.

Q. Who was it that took the receipts from that business?

A. They were just put in an envelope and given to a bookkeeper.

The Referee: You mean the money was put in an envelope?

A. He was asking about receipts.

The Referee: He means cash receipts.

Mr. Tobin: That is what I mean.

A. Money, cash receipts, we just try to pay all the bills. There were a lot more bills than that, [47] and most of the bills were C.O.D. plus; an order would come in for $100.00, and there was a big bill order; and so we would pay "C.O.D. plus"; in other words, plus ten or twenty; and they would bill the other, to keep it current.

Q. Who was it took the profits?

A. There weren't any profits.

Q. Now, among the assets that Mr. Collins claims to own is a claim against you in the sum of $2,300.00. Do you know anything about that?

A. No, I don't. For $2,300.00?

The Referee: What is that?

Mr. Tobin: He claims holding a claim against you for $2,300.00, as an asset.

(Testimony of Stanley E. Lefringhouse.)

A. Can Mr. Collins clear that up?

The Referee: What do you know about it?

A. I don't think—I have no recollection at all owing Mr. Collins $2,300.00.

Q. (By Mr. Tobin): Did you owe him any sum, so far as you know?

A. No, I do not. I would like that cleared, though.

The Referee: Don't worry about it now. Go ahead.

Mr. Tobin: I think that is all so far as this witness is concerned. [48]

Examination

Q. (By the Referee): What arrangement, if any, did you make with Mr. Collins when you went there, on or about May 11, 1954? Did you have anything in writing? A. No, sir.

Q. What was the verbal arrangement?

A. Mr. Collins, from the time he bought the license in 1953, was going to buy the license for me; and I was going to pay him the sum of $5,500.00 back, at the rate of $150.00 a month, and mortgage my equipment and everything to cover the cost of the license. Instead, Mr. Collins put the license in his own name; and after that he said I would have to pay him $5,500.00 cash, all in one piece before he would transfer the license. Well, it just went on; and I went down to the Board and signed up as manager, and leased the property to him, with my equipment; and up to this time

(Testimony of Stanley E. Lefringhouse.)

I tried to work a deal with him whereby I would buy the license and pay him on it. After the deal with Litchenfeld that went into escrow in January, 1954, at that time I became, in the escrow Mr. Collins signed the escrow that I owned all fixtures and equipment. It is a matter of record with the Vista Escrow; and he was to get $5,500.00 for his license in that escrow. The reason this escrow did not go through — they served a minor and that jeopardized the license. It was not just a normal [49] transfer any more, because during that time they had possession and they served a minor.

Q. Who? A. Litchenfeld.

Q. Litchenfeld went into possession?

A. January 18, 1954, yes.

Q. Were you a party to that escrow?

A. Yes, I was.

Q. Were you selling your fixtures?

A. I was selling the lease, furniture and fixtures, and all that.

Q. You were selling the fixtures.

A. The furniture, fixtures and lease. I had the master lease. Mr. Collins was leasing from me.

Q. That deal did not go through? A. No.

Q. You still owned the fixtures?

A. I imagine so; I know so.

Q. What deal was made about May 11, 1954?

A. I was the owner and I was the manager, and I tried to make a deal, and he agreed to sell me the license. Well, that liquor scandal came up. He agreed to sell the liquor license for $4,100.00, on

(Testimony of Stanley E. Lefringhouse.)

the basis of so much a month; I made a note, payable to his brother, so that he could discount it, and he and I signed the note. It is rather complicated. But after we signed the note again I [50] mortgaged—I was supposed to mortgage the equipment and fixtures; and Mr. Collins would not go into escrow and I would not sign, even through there was intention to mortgage, I wouldn't sign when the deal fell through, and we were right back where we started from—that Mr. Collins owned the license and I owned the fixtures and furniture, and he owned the business, and I was the manager. On December 23, 1954, Mr. Collins come in and pulled the license off the wall, and took all the liquor and took it home, and came back next day and took some more home, and it is all at his own home; I pulled down the door; and that is the situation as it stands right now.

Q. Has the place been locked up since?

A. Yes.

Q. Who owns the fixtures?

A. I do. I had to pay for most of the fixtures after it was closed. They were still mortgaged in my name, and I paid them off.

Q. Are they clear now? A. Yes.

Q. Well, you say that Mr. Collins was the owner of the business. A. Yes, sir, that's right.

Q. Did you have to have any license for this business outside of the liquor license?

A. Yes, we did. [51]

Q. What kind, for instance?

(Testimony of Stanley E. Lefringhouse.)

A. Well, there was a dancing license, food license.

Q. Wait a minute, one by one. The dancing license is, in whose name was that issued in?

A. John A. Collins.

Q. What is another license?

A. Food license to serve food.

Q. In whose name? A. John A. Collins.

Q. I am talking now about the period in 1954 after you went back. A. That's right.

Q. Any others? A. Sales tax.

Q. In whose name? A. John A. Collins.

Q. Well, now, between May 11, 1954, and December 23, 1954, did John Collins get any cash at all out of that business?

A. Yes. He and his brother—his brother is a juke box operator; and he and his brother have a juke box there together; and they took the cash three or four times—all the money from the juke box; and I did not make a record of it; but other than that he did not receive any money, because [52] there was none—the business was operated at a loss. We had all the old bills.

Q. What money did you get?

A. I did receive salary two or three times; but I have not been paid over three or four times since it started, and I have not collected rent other than the first and the last months.

Q. Between May 11, 1954, and December 23, 1954, how much money do you think you got for your own personal use out of that business?

(Testimony of Stanley E. Lefringhouse.)

A. For my own personal use?

Q. Yes. A. None.

Q. And you had to pay rent, did you not?

A. I did.

Q. How much rent did you pay?

A. Well, at first, for the master lease control of the liquor store, which I own, in front—my wife and I own it—we are both on the license.

Q. Do you still run that liquor store?

A. My wife and I run it.

Q. How much was the master lease?

A. The master lease, in 1953——

Q. In 1954.

A. Well, part of 1954 it was $150.00; and then, in the latter part of '54, it was raised to $350.00, about October, 1954. [53]

Q. Did John Collins ever pay you any rent?

A. Just the first and last month. Then, maybe on the books—I was to pay the rent to my landlord—to pay the amount he owed.

Q. Is the lease you have with Mr. Collins in writing? A. No lease in writing.

Q. What was the rent to be?

A. $225.00 a month.

Q. And he actually paid you $450.00?

A. That's right.

Q. What did you do when your own rent was raised? Did you make any arrangement with Mr. Collins?

A. At that time I had an arrangement with him—in July, 1954, he told me he would sell me

(Testimony of Stanley E. Lefringhouse.)

the license for $4,100.00, and let me pay $150.00 a month; and on that basis made a new lease, and then, remodeling the place and spending some money, then he would not take it to escrow; and you cannot transfer a license without going to escrow.

Q. What do you mean?

A. The master lease for the whole thing was expiring.

Q. You made a new lease with the owner of the building? A. Yes. [54]

Q. Not by Mr. Collins? A. That's right.

Q. How long was this sale in 1954 pending?

A. That was from January 8th to May 11th.

Q. That was the other sale, was it not, to Litchenfeld? A. Yes.

Q. After that you and Mr. Collins worked up a deal whereby you were going to get the license?

A. Yes.

Q. How long was this pending?

A. From about July until October, I would say.

Q. During that time how much time did Mr. Collins spend in this business?

A. He came in every day.

Q. Did he work in there?

A. No. He just came around.

Q. You worked in there? A. Yes.

Q. You hired and fired? A. Yes.

Q. Well, you know, now, this thing is not as clear as it might be. You testified that Litchenfeld ran the business while the sale was in process?

(Testimony of Stanley E. Lefringhouse.)

A. Yes, sir.

Q. You also had a sale in process, and it could [55] probably be said you ran the business, after May 11, 1954, and you didn't turn over any money to Collins, you not only exercised all of the rights that a manager might have, but you exercised all of the rights that any owner of the business might have. Well, did you ever try to go into escrow on this 1954 deal with Collins? A. Yes.

Q. What did you do?

A. Well, I went in ahead and signed the note for the license.

Q. The note, did you get it back? A. No.

Q. It has been destroyed, or something?

A. No; his brother is suing me for that note. That is why I wanted it clear where the $2,300.00 he and I signed. He might figure he owns half of his brother's note.

Q. Do you have any copy of that note?

A. Yes.

Q. Do you have it with you? A. No.

Q. When was it made out, if you know?

A. Approximately July, 1954.

Q. And for about how much? A. $4,100.00.

Q. What was it for? [56]

A. To buy this liquor license in question.

Q. Was it made out to John Collins?

A. No; it was made out to Lawrence, his brother, who is in the juke box business.

Q. Where is he? A. In Los Angeles.

Q. What is his business?

(Testimony of Stanley E. Lefringhouse.)

A. He is in the juke box business.

Q. That is the brother with him in the juke box business? A. Yes.

Q. And both you and John Collins signed it?

A. The reason they wanted me and John to sign to Larry was, if they could go to the bank, Larry, being in business might discount it, with two signatures — they could get the cash immediately.

Q. You were supposed to pay it? A. Yes.

Q. And you were supposed to get the license for it? A. Yes, and mortgaged my equipment.

Q. When did Lawrence sue you?

A. February 4, 1955.

Q. Where?

A. In the Superior Court, Department 1.

Q. Had you paid anything on the note? [57]

A. Yes, I did; I gave them a couple of payments.

Q. How much?

A. I would have to look into the records, I don't recall that.

Q. Can you give me an idea? A. $500.00.

Q. He sued you for the balance?

A. He is suing me for the whole thing.

Q. Not even giving you credit for what was paid? A. No.

Q. What did you do in the suit?

A. I answered the suit.

Q. What did you say in your answer?

A. Briefly just what I have said here, sir.

(Testimony of Stanley E. Lefringhouse.)

Q. That you didn't owe the note?

A. Yes; that there was no consideration.

Q. What is the status of the case now?

A. It comes up for trial December 30, 1955; and in the meantime his brother has put a marshal in our liquor store, my wife's and my liquor store, and taken out $3,000.00 on this note—the note plus the marshal's fees, plus 25 percent.

Q. Plus 25 percent of what?

A. For damages—some rule—they were going to move the whole liquor store out — John and his [58] brother Larry, under some rule they have, after three days you can move it out unless you put up a cash bond; and the cash bond was $7,300.00.

Q. You have a cash bond up?

A. Yes, $7,300.00.

Q. You are being sued for the full face amount of the note plus interest and attorney's fees?

A. Yes; they total about $4,600.00.

Q. Well, why have you not done something with the fixtures since John Collins came in and tore the license off the wall?

A. Well, I didn't want to go further in debt—I own the fixtures and equipment; the license cost me $5,500.00. I went out and contacted Ralph Meyer, and if you don't have the cash they want at the time, and fees, and I don't have the $5,500.00, and I am trying to get it together.

Q. But you are not getting any rent out of this?

A. No, I will have to pay the balance, the whole rent. The place is posted now.

(Testimony of Stanley E. Lefringhouse.)

Q. What do you mean?

A. Well, I have it posted. The corporation is going in there.

Q. What do you know about the de Carlo deal?

A. I know that de Carlo and John Collins are very good friends. At the time when we had this [59] liquor store, we put in a third party claim, when they had the marshal in there, and, so, they had to put up a justification on the sureties, and de Carlo signed.

Q. What are you talking about now?

A. I am talking about this note, that Larry Collins sued us on, and put a marshal in there, collecting the money. Well, my wife and I owned the liquor store as partners, and I was the only one that signed the note; and, so, we put up a third party claim; and de Carlo was one of the ones who put up a bond for them. They are friends and they have a juke box in this place, and games, and things like that, and de Carlo applied for a license, for a beer and wine place. They have a juke box and bowling games.

Q. Where is this juke box business of John Collins? Do they have a headquarters?

A. The juke box business is in Whittier, and they operate around that area. I think Larry testified he had one thousand records, which is rather unusual for a private owner.

Q. During the time this juke box was in your liquor store?

(Testimony of Stanley E. Lefringhouse.)

A. No, in the bar. They were taking fifty percent of the receipts.

Q. You don't have one in the liquor store?

A. No. [60]

Q. Just in the bar? A. Yes.

Q. They don't have anything to do but to put it in and they take fifty percent of the receipts?

A. Yes.

The Referee: Any further questions?

Mr. Tobin: No, your Honor.

Cross Examination

Q. (By Mrs. Carver): Mr. Lefringhouse, when did you first become acquainted with Mr. Collins?

A. With John Collins?

Q. Yes. A. 1952, I think.

Q. At that time you were operating a soft drink bar, and wine? A. Soft drinks and wine?

Q. Yes. A. Yes, that's right.

Q. Now, at the time Mr. Collins became interested in your place of business, isn't it a fact he paid you $3,500.00?

A. No, it is not a fact.

Q. What did he pay you?

A. Nothing. He paid me the $450.00 for the first and last months' rent. [61]

Q. Is it your testimony he did not pay you $3,500.00? A. That's right.

Q. What was the arrangement that you and Mr. Collins had immediately after Mr. Collins procured the original license? A. What is that?

(Testimony of Stanley E. Lefringhouse.)

Q. What arrangement did you and Mr. Collins have after Mr. Collins procured the original license?

A. The agreement was to be that I was to have the license. When Mr. Collins put it in his own name, he wanted $5,500.00, cash.

Q. I am speaking after the operation of the business.

A. I was just the manager. He had me go down to the State Board of Equalization and file as manager and be fingerprinted. That was in about July.

Q. Were you to get a percentage from the operation? A. No; I was supposed to get a salary.

Q. Were you paid the salary during that period? A. No, I was not.

Q. Who has the books and records of the business? A. Mr. Collins has most of them.

Q. Did you turn them over to him? [62]

A. Well, yes, one set of books he took, at the time he took the liquor and things, he took some records.

Q. Do you know when that was?

A. I would say that was in about, I couldn't say exactly, the last time, when he took out the liquor he took whatever records was behind the bar there, and that was in December, 1954.

Q. Do you have any records at all?

A. Very few.

Q. What do you have?

A. I have some of the payroll sheets, where they pay the labor and social security, and how much

(Testimony of Stanley E. Lefringhouse.)

was withheld on social security, and I have some of the sales tax records.

Q. Do you have possession of those records now?

A. Some of them, yes, I do.

Q. Mr. Lefringhouse, isn't it a fact that you were to pay Mr. Collins $250.00 a month for the operation of the business before it was sold to Mr. Litchenfeld?

A. No, that is not true. That would be illegal.

Q. Your liquor store, is that in the front of the premises?

A. The liquor store of my wife and I is in front of the store, yes. [63]

Q. How were deliveries of merchandise made?

A. It is divided into two sections, and there is no door between the sections.

The Referee: That is not the question. When you bought liquor, who was it billed to?

A. When I buy liquor at the liquor store?

Q. Yes.

A. It is billed to my wife and I, under the names of Stanley and Norine at 13113—13115 San Antonio.

Q. Is liquor delivered in pint bottles?

A. All sizes, "on" and "off" sales. You can order it in pints, if you want.

Q. In connection with the operation of the liquor place, a cocktail bar, did you purchase any pint bottles of liquor?

A. I think we purchased pints or anything else. There would be tenths.

(Testimony of Stanley E. Lefringhouse.)

Q. As a general practice you would order liquor in pint bottles for the cocktail bar, wouldn't you?

A. There is two sizes of bottles, pints and tenths.

Q. In pints.

A. Yes, you might, not on any pouring whiskey.

Q. Not as a general rule? A. No.

Q. Would you order it in half-pints? [64]

A. No.

The Referee: Mrs. Carver, I think that is immaterial now. It is quite obvious that this gentleman ordered liquor for the liquor store operated by the partnership and also for the cocktail bar. Now, if he ordered liquor for the cocktail bar and used it in the liquor store, that is a matter between Mr. Collins and Mr. Lefringhouse, but not necessarily a matter between Mr. Collins and the seller.

(Discussion.)

Mrs. Carver: I might say to the Court now that this $2,300.00 is in error. It is $1,800.00.

Q. (By Mrs. Carver): In connection with the deal with Litchenfeld, did Litchenfeld pay for the stock of liquor in the cocktail bar at the time he took it over? A. I can't recall on that.

Q. Did he pay to you the sum of $1,800.00 for the stock of liquor?

A. I can't recall that. There was money put in escrow to go both ways, and I don't recall. There was $3,000.00 in the escrow, which Mr. Collins knows, but of that $1,600.00 went to salesmen, or goods; and there were escrow fees so I that I imagine there was about $800.00 of the $3,000.00 left.

(Testimony of Stanley E. Lefringhouse.)

Q. Of the moneys paid into escrow were any moneys paid out of the escrow at all for that liquor stock? [65] A. No.

Q. The furniture that is in the place, how much of the furniture was in the premises when Mr. Collins first entered into the picture, in 1953?

A. I would say about one-half of the fixtures.

Q. Since that time other fixtures have been purchased? A. That's right.

Q. Would you tell from what source the purchase price was obtained?

A. From my own personal money.

Q. Was it from the operation of the cocktail bar? A. No.

Q. Did you tell Mr. Collins at any time that you were applying payment on the purchase of furniture and not paying it to him? A. No.

Mrs. Carver: That is all, your Honor.

(There being no further question the witness was excused.)

JOHN A. COLLINS

recalled.

Examination

Q. (By Mr. Tobin): Mr. Collins, this list of accounts receivable that your counsel handed me a few minutes ago, is that a list of accounts receivable that you claim are due you?

A. That is true.

Q. Can you tell the addresses of any of those parties you list here?

(Testimony of John A. Collins.)

The Referee: Let us not bother about addresses now.

Mr. Tobin: I would like to offer this in evidence.

The Referee: Petitioning creditors' Exhibit No. 3. [67]

Q. What is this Lefringhouse item of $1800, or $2300? Is that an asset?

Mrs. Carver: Yes. I might explain, because those were just rough notes I made and I did not intend they be given—but I did not extent the $1800—that is not on that—that is on the statement of assets.

Mr. Tobin: I will put it in as his statement.

The Referee: Petitioning creditors' Exhibit No. 4.

Mrs. Carver: I might say the $2300 refers to accounts receivable and the $1800 is not extended.

Examination

Q. (By the Referee): Mr. Collins, you heard the testimony of Mr. Lefringhouse, that you and he gave your brother a note for $4100?

A. That is true and correct.

Q. What was it?

A. As of May 11th, when I took back the bar, Stan Lefringhouse and I made an agreement that between us we would become partners. At that time I got the escrow, and everything—what I valued the bar and he valued the bar at—in the agreement with him — was the indebtedness against the bar; and with the discounting of the indebtedness—of

(Testimony of John A. Collins.)

the sale—in other words, the bar we figured at $14,400; the indebtedness was approximately $7500, I believe. Now, Stan had some money coming from it—in the event the deal went through, he some money coming — about $1400 — and I had $5500 coming. In order for him and I to become partners [68] we took the $1400 he had, and $5500 that I had, and we subtracted the $1400 from the $5500, which left $4100. When I had moved out I had borrowed some money from my brother, to the extent of $3500 or $3600—I owed him. And what I did—I transferred the note. In other words, Stan and I were going to give the note to Larry; Stan and I would be on equal footing, and we would all be happy.

Q. You never gave Mr. Lefringhouse a partnership interest, did you? A. No.

Q. You still claim the license as your asset—are you not claiming the license?

A. I have not claimed it as an asset.

Q. You transferred it to de Carlo?

A. Yes.

Q. You did not give Lefringhouse anything out of the transfer? A. I did not get it.

Q. You did not give him anything, did you?

A. No.

Q. You are now claiming to own the fixtures?

A. Yes.

Q. What did he get for the $4100?

A. He has a right to it, sir.

(Testimony of John A. Collins.)

Q. Then he has a right in the fixtures, is that right? A. That is very possible. [69]

Q. Yet you peddled the license without any consideration of any kind?

A. It was not the reason; that was not the idea.

Q. Why did you give this license away?

A. It was going to expire.

Q. Why did you give it away?

A. What else was I going to do with it? It would do no one any good.

Q. Why didn't you give it to the man who was going to enter into partnership with, who had given you a note for $4100?

A. Because I would not stop the arrangements we had—we would enter into a corporation.

(Witness excused.)

HAROLD HARRIS

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): Mr. Harris, you are an agent for William A. Wylie, the receiver in bankruptcy in this proceeding? A. Yes.

Q. And as such did you contact the bankrupt, John Collins, shortly after Mr. Wylie's appointment as receiver? A. Yes, sir.

Q. Where were you able to contact him?

A. At his home.

Q. Did you make an inventory of the stock of [70] liquor he had stored out there? A. Yes.

(Testimony of Harold Harris.)

Q. Did you make demand on him for any other assets?

A. I asked Mr. Collins were there any other assets any other place, and he said "no."

Q. Did he tell you he had cash in his possession consisting of uncashed compensation checks in the sum of $1500? A. No, sir.

Q. What did the stock of whisky you found out there in his garage inventory, approximately?

A. About $500.

Q. Did he tell you he had an unliquidated claim against Davis Piping and Ream Manufacturing Company, on which he had been offered a settlement of $3500? A. No.

The Referee: There is no use going over the details. He testified that Mr. Collins told him he had no other assets.

Mr. Tobin: That is all.

Cross Examination

Q. (By Mrs. Carver): Mr. Harris, when did you first see Mr. Collins? How long ago was that?

A. About five weeks ago.

Q. Where did you see him five weeks ago? [71]

A. I never saw him; I spoke to him on the telephone. I spoke to him at various times up until last Saturday, when I took the inventory.

The Referee: When did you take the inventory?

A. Last Saturday.

Q. (By Mrs. Carver): Saturday was the first time you have actually seen Mr. Collins, is that right? A. Yes.

(Testimony of Harold Harris.)

Q. Did you ask him about any other claims or anything he might have?

A. I asked him: "Are there any other assets that I should know about?"

Mrs. Carver: That is all.

(There being no further questions the witness was excused.) (Discussion and matter continued to Monday, November 14, at two o'clock p.m.) [72]

[Endorsed]: Filed November 10, 1955.

[Title of District Court and Cause.]

Monday, November 14, 1955, 2:00 O'Clock P.M.

Mr. Tobin: If your Honor please, since the adjournment of court and the receiving in evidence of a statement of assets of the bankrupt, we have had an investigation made into the value, and whether or not the bankrupt has assets. At this time we would ask the Court to reopen the case for further testimony on the part of the petitioning creditors.

The Referee: Is there any objection?

Mrs. Carver: No objection.

The Referee: Motion granted. Proceed.

HAROLD HARRIS

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): I believe you have heretofore testified that you were an agent for Mr. Wylie, the Receiver? A. Yes.

(Testimony of Harold Harris.)

Q. And engaged with him in the handling of assets in connection with the bankrupt's estate?

A. Yes.

Q. Now, did you make any attempt during the last week to appraise the household furniture of the bankrupt? [74] A. Yes, sir.

Q. Where did you go to look at that furniture?

A. At Mr. Collins' home, in Whittier.

Q. Where is that?

A. No. 10423 Townley Drive, Whittier.

Q. Were you able to gain access to his home?

A. No.

Q. Just tell the Court what efforts you made to view these assets during the last week.

A. Friday morning, November 11th, I met Mr. Stern at the address of Mr. Collins' home, about 8:30. We talked several minutes outside of the house, and then I rang the bell, and there wasn't any answer. And, so, we said we would wait a while to see if someone would come back. I rang the bell half a dozen times within a period of about one hour or an hour and fifteen minutes and I still did not get an answer, and I left.

Q. Did you attempt to contact the bankrupt by telephone?

A. Yes, Friday afternoon, November 11th.

Q. Did you get any answer? A. No.

Q. Then did you make any further attempt to contact him?

A. Saturday morning I called again, on [75] November 12th.

(Testimony of Harold Harris.)

Q. Did you get an answer?

A. It seemed to me like a little girl answered the phone.

Q. Did you get to talk to the bankrupt?

A. No.

Q. Then when did you try to get him again?

A. This morning, at 7:45.

Q. Did you get him?

A. It seemed like it was the same little girl again, and she said her father was not at home.

Q. You did not get a chance to talk to him?

A. No.

Q. Did you get a chance at any time to make an inventory of the stock of liquor that the bankrupt keeps in his garage? A. Yes.

Q. Did you take that inventory in writing?

A. Yes.

Mr. Tobin: Now, while counsel is examining the written inventory, I will ask you to state with regard to the condition of the bottles, as to whether they were open or closed?

A. Well, the greater percentage of the liquor is open.

Q. Is open liquor marketable? [76]

A. I can only tell you what has happened in the past.

The Referee: Let us keep within the rules of evidence. It calls for this gentleman's opinion. It would not carry any weight with this court whatsoever what he says—with all due respect to Mr. Harris.

(Testimony of Harold Harris.)

Q. (By Mr. Tobin): The written inventory that you took did indicate what bottles were intact and what bottles were open? A. Yes, sir.

Q. Will you please tell us on which pages of this inventory are contained the bottles that were intact? A. Pages 3 and 4.

Q. What pages indicate the bottles that were open? A. I think I misunderstood you.

Q. Which ones were intact?

A. Pages 1 and 2.

Q. And on what pages are those that were open?

A. Pages 3 and 4.

Q. Are you familiar with the market value of liquor?

A. I use Patterson's book for my value. In this case I used the Patterson's.

Mr. Tobin: I would like to offer this inventory [77] in evidence, if the Court please.

The Referee: This is Petitioning Creditors' Exhibit No. 5.

Q. (By Mr. Tobin): When you and Mr. Stern were out there at the bankrupt's home did you see the Ford car out there? A. Yes.

Q. Whereabouts?

A. It was in the driveway.

Q. Did you look it over? A. Yes.

Q. Will you state to the Court what condition the car was in?

A. The front of the car was up on some metal racks, and I think the transmission was out; and

(Testimony of Harold Harris.)

there were some other parts of the car laying in the garage, which was open.

Q. Did you see anybody remove any of the mechanism of that car? A. No.

Q. On any of the trips you made out there?

A. No.

Q. Have you ever had an opportunity to see the bankrupt's household furniture?

A. I went in at the time of taking of the liquor inventory from the front of the house into the bedroom. [78]

Q. And what did you see in there?

A. Well, in the closet, on the top shelf and the shelf below there was a certain amount of liquor, which I have inventoried.

Q. Did you ever see the phonograph records that the bankrupt listed at $1,000.00? A. No.

Q. Did he tell you at the time you took the inventory of the liquor, or at any other time, that he had one thousand phonograph records worth $1,000.00? A. No.

Q. Did you ever see these tools that the bankrupt has listed, of the value of $1,000.00?

A. Well, like Friday morning, when I was out there at the garage, it was open, and I didn't want to enter the garage, because I did not think I could; but from the outside of the garage it seemed like in the back of the garage, there seemed to me to be a welder, about thirty inches high and twenty-four inches wide and twenty-four inches around, on each side 24 by 24 by 30.

(Testimony of Harold Harris.)

Q. Do you know anything about the reasonable market value of such a machine?

A. I imagine, from my past experience, around $200.00, if that is what this was.

Mr. Tobin: You may cross-examine. [79]

Cross Examination

Q. (By Mrs. Carver): Mr. Harris, at the last hearing in connection with this matter, were you asked the following question and give the following answer:

"Q. What did the stock of whisky you found out there in his garage inventory, approximately?

"A. About $500.00."

A. Yes.

Q. That was your idea as to the value of the inventory?

A. At that time. I had only written it up; I had not picked out the amount of money. It seemed like there was that much. I could have been mistaken.

Q. But you gave as your estimate $500.00?

A. Yes.

Q. The automobile you testified concerning, did you observe the license number?

A. No, I did not.

Mrs. Carver: That is all.

Examination

Q. (By the Referee): Mr. Harris, when did you take the inventory, which is Petitioning Creditors' Exhibit No. 5?

(Testimony of Harold Harris.)

A. I took that about three weeks ago, on a Saturday. [80]

Q. Three weeks ago? A. Yes.

Q. Before you testified previously in this case on November 4th, is that right? It was before that time you took the inventory?

A. I think it was.

Q. And how have you indicated on the inventory the bottles which were open?

A. I indicated it by breaking them into tenths.

Q. Will you point one out to me so that I can see how you marked it?

(Witness indicating.)

Q. You are showing me the last page.

A. Yes.

Q. You are showing the first item on that page, which is 9/10 of a quart of D.O.M. liquor?

A. That's right.

Q. That is a bottle that is open? A. Yes.

Q. On the page immediately preceding that you have some bottles that are marked 3/10?

A. Yes.

Q. That is the way you figured it?

A. I figured in tenths, because it is easier to figure with tenths. [81]

The Referee: Anything further?

Mr. Tobin: No.

Mrs. Carver: No.

(Witness excused.)

WALTER F. STERN

a witness, having been first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your occupation?

A. An adjuster.

Q. For what organization?

A. The Credit Managers' Association of Southern California.

Q. How long have you done that work?

A. Over thirty-two years.

Q. During the thirty-two years you have worked for the Credit Managers' Association of Southern California and its predecessors, have you had occasion to handle stocks of all kinds? A. Yes.

Q. And are you familiar with the value of cars?

A. Yes, sir.

Q. And of liquors? A. Yes.

Q. Now, I will ask you if, pursuant to a request from our office, you made an appointment to meet [82] Harold Harris at the home of the bankrupt on November 11th? A. Yes.

Q. And at what time did you arrive there?

A. I arrived there about eight o'clock.

The Referee: Well, Mr. Tobin, I don't think that Mrs. Carver will dispute the fact you tried to see the furniture but did not.

Mr. Tobin: I meant something else.

The Referee: All right.

Q. (By Mr. Tobin): Mr. Stern, standing in

(Testimony of Walter F. Stern.)

the driveway of the place where you met Mr. Harris was there a Ford car?

A. There was a Ford, yes.

Q. Before Mr. Harris arrived there did anybody take anything out of that Ford car?

A. Yes.

Q. Just tell the Court what you saw.

A. There was a young man, blond, came out of the house, opened the door of this Ford, and took out some pieces of mechanism, and went out to the curb—there was a Chrysler convertible there—and put these pieces of mechanism in the Chrysler, closed the door, and went back into the house again.

The Referee: Let me ask—where was the mechanism in the car in the driveway? [83]

A. He opened the door and took it out, and presumably——

Q. Don't presume. Just tell us what you saw. However, you did not see him raise the hood and remove some mechanism from the car, did you?

A. No, he opened a door.

Q. Of the passenger compartment?

A. Yes.

Q. Where did he put it in the Chrysler?

A. He put it on the floor of the passenger compartment.

The Referee: All right.

Q. (By Mr. Tobin): What was the condition of the Ford with regard to being jacked up?

A. The front part was jacked up, and the drive shaft was down on the concrete.

(Testimony of Walter F. Stern.)

Q. Are you familiar with the market for used phonograph records? A. Yes.

Q. Do you know what they are selling for apiece at the present time?

A. Around five cents each. Did you say used ones?

Q. Yes. A. Yes, sir.

Q. Did you get any view of the bankrupt's tools? [84]

A. Well, after this young man put this piece of mechanism in the Chrysler and went back into the house, a short time later he came back out of the house again, got in the Chrysler and drove away.

Q. And did you take a look into the garage?

A. I just came up with Mr. Harris into the driveway. The door was open, and I just casually looked in. I didn't make any specific mental notes of what was in there at all.

Q. Assuming that furniture was bought about two years ago at a cost of $4,000.00 and was given ordinary use in a household, could you tell us what would be the reasonable selling value for furniture, given a buyer willing to buy and a seller willing to sell, at a reasonable time to convert the furniture into cash?

A. Well, it depends upon the conditions. If it had been badly misused it could be as low as $750.00, or even lower than that if the upholstery at the time had been burned; if it had been properly taken care of it could be $1,600.00 or $1,800.00.

(Testimony of Walter F. Stern.)

Q. Would you say that furniture purchased two years ago at a cost of $4,000.00 would be worth $1,000.00 today? A. No.

Q. Or last August? A. No. [85]

Mr. Tobin: That is all.

Cross Examination

Q. (By Mrs. Carver): Mr. Stern, do you know just what it was that the young man took out of the automobile?

A. No; I think it was some piece of mechanism that was in one hand. I cannot guess, I did not see it. I saw him pick it up and take it out.

Q. You are not in position to say whether or not it was a part of the car that was sitting in the driveway?

A. No, I wouldn't know whether it was part of the car, except it was a part.

Q. Mr. Stern, what would be your testimony if these records constituted a collector's item, what would be your idea of the value of a record that was a collector's item?

A. If it was a collector's item and a complete album it could be in any specific amount; it could be $4,000.00, $5,000.00 or $10,000.00, if it was a complete album of some particular person whose popularity exists; but if it was just a used one, it would be different.

Q. You testified as to five cents for used records of no particular value. A. Used record.

Mrs. Carver: That is all. [86]

(There being no further questions, the witness was excused.)

LLOYD D. CRAYNE

a witness, having been first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): What is your profession or occupation?

A. I am employed at the Pacific Employers' Insurance Company as the assistant claims manager in the Workmen's Compensation Department.

Q. Are you familiar with the claim that has been asserted by this bankrupt, John Collins, against the company? A. Yes, sir.

Q. What is the status of that claim at the present time?

A. It is in litigation before the Industrial Accident Commission.

Q. Has your company denied liability?

A. Yes, we did.

Q. And the matter is still in litigation?

A. Yes, sir.

Q. Now, will you tell us whether or not any notice of liens have been filed against that claim?

A. Yes, we have received two notices. [87]

Q. What are they?

A. The Department of Employment of the State of California filed a lien September 12, 1955, in the sum of $1,010.00; and the Prudential Insurance Company of America filed a lien April 20, 1955, in the sum of $30.00.

(Testimony of Lloyd D. Crayne.)

Examination

Q. (By the Referee): Are there any other liens?

A. That is all that have come to our file.

Q. What is the nature of the claim which was made?

A. Workmen's compensation insurance.

Q. Suffered by whom?

A. By Mr. Collins.

Q. In whose employ?

A. Two employers, at least that we know of, the Rheem Manufacturing Company is one and the other is the Davis Pipe Company.

Q. Is it one claim or two claims?

A. It is two claims but they have been consolidated under one action. I believe there is a third action that has been filed.

Q. You are the insurance carrier for the Rheem Manufacturing Company and the Davis Pipe Company? A. That is correct.

Q. You understand there may be a similar claim [88] against someone else where the insured contractor would be sued? A. Yes.

Q. Are these claims made in a specific dollar amount? A. No, they are not.

Q. They are made for injury suffered, is that right?

A. They are made to secure the benefit under the Labor Code, not for specific amounts.

Q. But, in any event, Mr. Collins asserts that while in the employ of these companies that you cover he was injured?

(Testimony of Lloyd D. Crayne.)

A. That is correct. Yes, that the injuries arose out of his employment on two different occasions.

Q. Your company has denied liability?

A. They have, in both cases.

Q. Have you given any reason for your denial of liability? A. I am sure we have.

Q. What reason have you given?

A. We did not believe the injuries did occur in the course of his employment.

Q. Your position is that it is not a covered injury? A. That is correct. [89]

Q. Has the matter been formally brought to the attention of the Industrial Accident Commission?

A. Yes, there have been two hearings and the matter has been continued to another date.

Q. Does it have some kind of a title or name or number?

A. The Industrial Accident Commission No. 55 LA-156-924.

Q. Your understanding is there were three separate injuries consolidated in that one action?

A. I saw a note in my file which says, "Requested all three injuries be consolidated under one heading." That is all I know of the third one.

Cross Examination

Q. (By Mrs. Carver): Are you the attorney, Mr. Crayne, who handled this claim for the Department? A. No.

Q. You are the investigator?

A. No; I work in the office.

(Testimony of Lloyd D. Crayne.)

Q. Are you familiar with what has been brought out at the various hearings?

A. As to details?

Q. Yes.

A. Well, no. At the conclusion the attorney would make his report, but the matter is still in litigation. [90]

Q. Are you familiar with any offers that might have been made by your company for settlement?

A. No, I couldn't tell you about that. The attorneys handle that.

Mrs. Carver: I believe that is all.

(There being no further questions, the witness was excused.)

Mr. Tobin: If the Court please, we are caught in rather a peculiar situation. I subpoenaed the Vista Escrow Company, and Mr. Waltreus has also been subpoenaed by the Superior Court of Long Beach for this morning; no matter which way he turned he was faced with two subpoenas; and he is not here. The escrow is a claim against Lichtenfeld, $3,000.00. We have the papers and we have the escrow, but we don't have the parties.

The Referee: Maybe Mrs. Carver will stipulate that if the witnesses were here they would testify to certain things.

Mrs. Carver: I wonder if I might look at that.

Mr. Tobin: Sure.

Mrs. Carver: Thank you.

(Looking at document.)

Mr. Tobin: Will you stipulate that the witness

Waltreus, if present, would testify that the sum of $3,000.00 was deposited in escrow No. 1123-LB, [91] showing transfer from John Collins dba John's Stage Coach and Stanley E. Lefringhouse to Juanita F. Lichtenfeld, 834 West Huntington Boulevard, Arcadia, California, opened on January 14, 1954, has remaining in it at the present time, after the payment of disbursements therefor, the sum of $123.08.

Mrs. Carver: Yes.

Mr. Tobin: You so stipulate?

Mrs. Carver: Yes, if he were present that he would so testify.

Mr. Tobin: Would you stipulate that the witness Waltreus, if present and testifying, would testify that the escrow contains a demand on Juanita F. Lichtenfeld and/or Juli, Inc., a California corporation, requiring them to deposit the balance of the purchase price in the escrow hereinbefore described, without stating any sum, but stating that unless this money is deposited within five days from date hereof legal action would be commenced against against the purchasers for rescission, and the purchasers to be held responsible for all damages sustained by Stanley E. Lefringhouse and John A. Collins, under date of May 4, 1954.

Mrs. Carver: May I see that?

(Looking at document): I so stipulate.

Mr. Tobin: I would like to examine Mr. Collins under Section 21-A. [92]

JOHN COLLINS

a witness, having been first duly sworn, testified as follows:

Examination

Q. (By Mr. Tobin): Mr. Collins, showing you the demand that has been stipulated to be the escrow No. 1123-LB, is that your signature on there? A. It does appear to be, yes.

Q. Did you ever start any suit against Juanita F. Lichtenfeld or Juli, Inc.? A. I did not.

Q. And they were the proposed purchasers of your liquor business? A. That's right.

Q. You never started any suit?

A. No. You mean legal?

Q. Yes, any legal proceeding of any kind?

A. No. We have talked of it.

Q. Now, you have listed that interest in that escrow at $3,000.00 in your list of assets that you have brought into court.

A. I believe so.

Q. And you have made no effort to collect it?

The Referee: That is what the man says.

Mr. Tobin: May I see the list of accounts receivable? [93]

The Referee: You may.

Q. (By Mr. Tobin): Mr. Collins, you have listed under "accounts receivable" "Bill's check, $16.50." Will you please tell us how a person could go at collecting this bill? What is the address?

A. I don't know. I could very easily locate it.

Q. What is his name?

A. I couldn't even tell you that; but I see him

(Testimony of John Collins.)

quite often. Some time ago I collected one of $45.00. That is why if he is crossed off.

Q. What is the $15.00 that is after it? You have the word "Seitz" scratched out. A. Yes.

Q. And $15.00 typed in after the $45.00.

A. These are moneys given out in cash; in other words, on this side here. This here side was for merchandise or something on that order. This is actual cash.

Q. Isn't it true that these are bar bills incurred prior to December, 1953, in a beer place which you ran?

A. Around December, 1953, is when we come to this amount, or this list, that is true.

Q. And those are bar bills?

A. Well, some of them; they are not all bar [94] bills. Some are checks. Some are for cash given, a five (dollar) bill, or something like that.

The Referee: Wait a minute. Were all these obligations incurred in one way or another in the operation of this bar? A. Not all.

Q. For instance, what ones have no relationship to the bar?

A. This man Seitz—I paid a payment on his car. He gave me the money back.

Q. Is he still listed?

A. No, he is crossed off.

Q. Do you have any other instances like that?

A. I got a check from a "Bill," $16.50. It was a check he gave me and I took it to the bank.

Q. Why did he give you the check, for what?

(Testimony of John Collins.)

A. Money I had loaned him out of my pocket.

Q. At the bar? A. No.

Q. Outside of the bar? A. Yes.

Q. (By Mr. Tobin): These all go back to December, 1953, or sooner? A. I would say yes.

Q. Who is this fellow "Dutch," who is listed for $77.45? [95]

A. He is a man that comes in the bar, and it is a bar bill.

Q. At which bar? A. The Schooner Cafe.

Q. You don't know what his last name is?

A. No. He lives in the 4300 block on Olive Street. I could point out the house; I could take you there, or something like that.

Q. What about "Clete"?

A. Another fellow, that was at the bar.

Q. And "Shorty Sharpe"?

A. He lives right close to the bar.

Q. That is $37.05. Is that for a bar bill?

A. I believe that part of it is cash.

Q. And you have "T. A. Sharpe."

A. That is a brother of his.

Q. Who is "Lloyd, $100.00"?

A. I believe that was for his pay check I cashed for him at the bar. There was some kind of a mixup on the pay check and for some reason or other they would not cash it because it was not signed properly.

Q. Where does he live?

A. He lives on Florence Place, I believe, on the

(Testimony of John Collins.)

corner of Florence Place. There are some motels there, and he lives right next to them.

Q. And who is this "Nolan"? [96]

A. He lives at Bell Gardens.

Q. What was that for, $10.50?

A. I believe that was for the bar.

Q. Then you have "Paul, $1.55."

A. He used to clean the place—clean up around there.

Q. Who is "Spohn, $10.25"?

A. Well, he is the man that sells Mercury-Lincoln automobiles.

Q. You don't know where he lives?

A. No, but I see him once in a while.

Q. What about "Smitty"? Where does he live?

A. I could not tell you where he lives.

Q. What about "Jimmy & Cliff, $2.85"?

A. That is a bar bill.

Q. And "Bart"?

A. That is this man's last name.

Q. How much would you be *willing for* those accounts receivable, you yourself?

A. I am not about to buy them.

Q. No, but if you were given the opportunity to buy them, would you pay $2,200.00 for them?

A. Well, naturally, money in hand is worth more.

Q. What would you, as the owner of the accounts receivable, what would you say they were actually worth? [97]

(Testimony of John Collins.)

A. If you collect them all they are worth $2,200.00.

Q. What is the chance of collecting them all? Are all of them collectible?

A. The most of them, I would say the chance is pretty good.

Q. Without the aid of a collection agency?

A. I believe so. I would say I had a lot more than that and I collected some.

Q. How would you locate people like "Smitty" and "Clete" and "Tex"? For instance, "Tex, $27.55," how would you locate him?

A. Do you mean just to go out and look for him or wait until some time I see him and ask him for it? That is about the way I would collect those bills.

Q. Have you, outside of this one payment that you say was made recently by Seitz been able to get any payments on any of the accounts since December, 1953? A. On that list?

Q. Yes.

A. There is more than one list.

Q. I am talking about these particular accounts that you claim are assets.

A. I have not tried to collect all of them.

Q. Now, you also list among your assets [98] Uncashed Compensation Checks. Demand was served on your counsel that you produce these uncashed compensation checks. Do you have any of them with you?

A. I believe that notice was served on me or

(Testimony of John Collins.)

my counsel on the 10th of November; and if I had the checks yet they would be of no value because they are only good for sixty days.

Q. Where are they? A. I cashed them.

Q. You listed them.

A. They are not all uncashed. There was cashed and uncashed checks as of the bankruptcy filing date.

Q. You list cash in the possession of debtor, to wit, uncashed compensation checks, $1,500.00. Now, how many uncashed compensation checks did you have when this case came to trial before this court a little over a week ago, I believe a week ago Friday?

A. I don't believe at that date I had any uncashed.

Q. What uncashed compensation checks did you have in your possession on August 22, 1955?

A. To be perfectly honest and exact, I couldn't tell you; but I do know that there was some and there was some cash as of the 22nd day of August. I did not even know it was filed against me for [99] two or three days after it was filed. I had no idea they were going to do it.

Q. After the petition was filed and after you learned a receiver had been appointed, did you have any uncashed compensation checks in your possession? A. I don't believe so.

Q. Do you recall that you called Mr. Weller right after the petition was filed and telling him

(Testimony of John Collins.)

that you would be at your home to receive the service of the involuntary petition?

A. When was this?

Q. About the 25th of August, about three days after the petition was filed.

A. I don't think it was that soon; but I did call Mr. Weller and ask how I could check on the involuntary bankruptcy—about it being served on me; and I called the United States Marshal and told him where I was, and asked him what time I could meet him; he brought the things down and served me.

Q. You told Mr. Weller at the time you called him, did you not, that you would come in from the beach and would be at your home at a certain time?

A. At any time convenient to the Marshal.

Q. You received service under those circumstances, is that right?

A. I received service that there was the [100] bankruptcy petition filed.

Q. Now, at the time you had your conversation with the United States Marshal and with Mr. Weller, did you have in your possession uncashed compensation checks of the value of $1,500.00?

A. I doubt that very much.

Q. Did you bring in your list of alleged assets, including uncashed compensation checks and cash in the sum of $1,500.00 with the intention of making this court believe that you had that amount in cash or uncashed compensation checks in your possession? A. In combination of both?

(Testimony of John Collins.)

Q. Yes.

A. In combination of both I believe I had $1,500.00 of compensation money as of approximately that date.

Examination

Q. (By the Referee): Let us clarify that. What do you mean by "compensation"?

A. The disability money the insurance company pays me.

Q. Which insurance company?

A. The Pacific Mutual pays me $20.00 a week; and the State pays me $35.00 or $40.00 a week.

Q. How long has that been going on?

A. It goes for six months. It started, I think, [101] around January 27th.

Q. Is that because of some injury?

A. That's right.

Q. And where did you suffer this injury?

A. At the Davis Pipe Company, on my job.

Q. The Pacific Mutual is paying it?

A. There is an arrangement with our union that the employer must carry this compensation insurance on the employees, at no cost to the employee. If we are off work for any reason they will pay us $20.00 a week.

Q. Who are the Pacific Employers' Insurance?

A. They are the carrier for the accident. It is like a compensation case.

Q. It all arises out of the same injury?

A. That is true.

Q. And the State is paying you some money?

(Testimony of John Collins.)

A. That is true.

Q. And the Pacific Mutual? A. Yes.

Q. And the Pacific Employers you want to pay you some money? A. Yes.

Q. All out of the same accident?

A. Eventually they are, I presume.

Q. Are you still getting these checks?

A. I don't know. [102]

Q. Where were you working when you were hurt? A. For the Davis Pipe.

Q. And when were you hurt?

A. In December.

Q. You also were hurt when you were working for the Rheems Manufacturing Company?

A. That is true.

Q. Which happened first?

A. The Rheems Manufacturing Company.

Q. Is the Pacific Mutual paying anything on account of the Rheems Manufacturing Company?

A. No.

Q. Is the State paying anything on account of the Rheems Manufacturing Company?

A. I don't believe so. I believe it is all for this accident in December.

Q. December, 1954? A. That is true.

Q. How often do these checks come?

A. Sometimes once a month, sometimes every five weeks.

Q. No; they don't do business that way.

A. Sometimes every week.

(Testimony of John Collins.)

Q. They should come at regular intervals. The State checks are paid weekly or monthly? [103]

A. I believe it is every three weeks or four weeks. I don't know exactly whether it is monthly or not. I don't believe it is.

Q. The Pacific Mutual, is that weekly or monthly?

A. When they pay, it is usually around $80.00 —I would say monthly, about every four weeks, sometimes.

Q. How were you paid at the Davis Pipe Company, weekly or monthly?

A. In wages, weekly.

Q. Are not the Pacific Mutual checks always in the same amount? A. No, sir.

Q. They are not? A. No.

Q. How much do they vary?

A. Well, anywhere from $25.00 to $200.00.

The Referee: Well, I don't think there is any use going on with a witness like this, Mrs. Carver. That is just contrary to all common knowledge of disability payments, unless this is a most exceptional set-up. Once that disability payments become payable, they are paid at regular intervals, in the same amount, for a certain length of time. Now, this man is going to have to bring in something more than just his naked word for it; and we are going to have some information as to when [104] these checks were cashed. That, again, is against common conduct. People as a rule, when they are getting compensation checks, they do not

(Testimony of John Collins.)

pile them up; although I must say that we did have one or two cases where the bankrupt had received checks for months and had put them in a drawer and had never done anything about it.

Mr. Tobin: May I ask a question?

The Referee: Yes.

Q. (By Mr. Tobin): You are married?

A. Yes, sir.

Q. How big a family do you have?

A. Three children.

Q. A wife and three children? A. Yes.

Q. Does your wife work? A. Now, yes.

Q. (By the Referee): Ordinarily does your wife work? A. No.

Q. When did she start working?

A. About three weeks ago.

Q. Before that time she did no work outside of the home, is that right?

A. That is somewhat correct.

The Referee: I don't want the record to show that she did no work, because most mothers and [105] married women do work.

Q. (By Mr. Tobin): How did you support your family when you were accumulating these checks until they amounted to $1,500.00?

A. There was a disagreement upon the amount of the checks and paid in such an unusual manner for the fact that the insurance company stated they did not feel there was an injury—they felt I was not injured, and therefore they withheld the checks. Then, all of a sudden, they started paying. Then

(Testimony of John Collins.)

they stopped, and then they started. I went to the hospital on June 10, 1955. At that time, the day I went into the hospital, the insurance company still insisted on the fact that there was nothing wrong with me. On June 15th they removed a disk from my spine; and right up to that time, as a matter of fact, they did not offer to pay the doctor or the hospital or anything. And, so, as of the day I went to the hospital, I gave my wife, well, our life savings, I will say, to live on while I was in the hospital, because I figured I could be in there about fifteen weeks.

Q. Where were your life savings?

A. At home.

Q. Not deposited in any bank? A. No.

Q. In what form?

A. Money, cash money. [106]

Q. Currency? A. Yes.

Q. Kept where? A. In my home.

Q. In a tin box or a sock?

A. In a paper envelope.

The Referee: Let us clear this up. When did you go to the hospital?

A. June 10th or 11th, 1955.

Q. What was the date when the application was made for the transfer of the license?

A. I believe August 5th.

Q. August 5th? A. That is correct.

Q. 1955. Well, Mr. Tobin, we are not concerned with June 10th. There are only two days that are material. One is August 5th, if that be the correct

(Testimony of John Collins.)

date of the application for transfer; the other is August 22nd, the date of bankruptcy.

Q. (By Mr. Tobin): Have you brought in the policy of insurance that you scheduled as having a cash value of $1,700.00?

A. That is in reference to all the insurance policies.

The Referee: You may examine those during the recess. Go ahead. [107]

Q. (By Mr. Tobin): Now, with regard to this car—how many cars have you in your family?

A. There is two cars.

Q. What are they?

A. One is a 1951 Chrysler; the other is a 1952 Ford.

Q. And on November 11th where was the 1952 Ford?

A. I really couldn't tell you exactly.

Q. Was it in the driveway of your home?

A. It possibly could have been.

Q. Was it jacked up?

A. It was jacked up—however, I did not see it jacked up, or I did not see it in the driveway.

Q. Was it out of repair?

A. I could not tell you. I doubt very much if it was out of repair. It could have been, but my boy drives it most of the time. He is a "teen-ager." I don't know what he is doing with it.

Q. Who has the Chrysler?

A. My wife usually drives the Chrysler.

Q. It stands in her name?

(Testimony of John Collins.)

A. That's right.

Q. But this $600.00 car, that you put in as of a $600.00 valuation, is the Ford?

A. That's right. [108]

Q. You heard Mr. Harris and Mr. Stern testify concerning it, is that right?

A. The $600.00 valuation?

Q. Yes.

A. I would say it was worth $600.00.

The Referee: Mr. Tobin, again it is immaterial what the car was like on November 11th. Our critical dates are August 5th and August 22nd.

Q. Now, this "claim for damages against," then there is a blank, "for medical expense advanced in connection with injury to son." Who is the "blank" you have got this claim against?

A. It is against the All State Insurance Company.

Q. Who is the man who injured your son?

A. I could not tell you offhand. The attorney would have it. It is being in litigation.

Q. I notice in your liabilities you list Queen of Angels Hospital, Dr. Benton, Dr. Johnson, Dr. Pheasant, Dr. Foley, Dr. Chapman, and Dr. Bailey. Which of those were doctors that attended your son? A. Dr. Bailey.

Q. His bill is $267.50?

A. That is the present bill up to August 22nd, or up to today.

Q. Is there any litigation pending with regard [109] to that claim for damages? A. Yes, sir.

(Testimony of John Collins.)

Q. In what court?

A. I don't know what court it is. Attorney Raoul Magana is taking care of it. He is an attorney in Los Angeles.

Q. You have had suit filed?

A. I believe so.

Q. You have had suit filed as guardian for the boy? A. Yes.

Q. And the suit was filed on his behalf?

A. I couldn't tell you.

Q. You made claim on the boy's behalf, didn't you? A. On his and mine.

Q. (By the Referee): How old is the boy?

A. Now he is 11.

The Referee: I think the father may have some claim, I don't know.

Mrs. Carver: The father would be the one.

Q. (By Mr. Tobin): On what do you base the $400.00 figure you put in the list of assets?

A. This man run the boy down, and they had to take the boy to the hospital in an ambulance, they smashed up his bicycle; and I had to have a [110] doctor and various bills of that nature. He was unconscious for a short time; and the bills I paid—I had to replace the bicycle; I had to pay the doctor, the hospital, and all that stuff. This one for Dr. Bailey—he happened to be the doctor for me; but that is not the bill for the boy. Dr. Bailey was taking care of me, for my back injury.

Q. You had five doctors on the back injury?

A. I believe it was only five.

(Testimony of John Collins.)

Q. Maybe six?

The Referee: There could be.

Q. (By Mr. Tobin): In regard to these tools, tell us just what tools you did have out there?

A. They are everything from small wrenches, crescent wrenches, screw drivers and hammers. There is an electric welding machine with cables, and so forth. There is a vise, a cut-off saw—any number of things like that.

The Referee: It may be that if we get too far along this line it will be necessary for Mr. Collins to exhibit those things to appraisers selected by the petitioning creditors—the household furniture, the tools, the car, and everything else. We are not gaining much information by this line of questioning, because it is simply Mr. Collins' best recollection of what he now has and his best estimate of [111] what the things are worth. Let us just hold that in abeyance until as and when the evidence relating to the transaction is in.

(At this point a brief recess was taken after which the following proceedings occurred.)

Q. (By Mr. Tobin): Mr. Collins, do you have any books or records of your business at all?

A. Of the Stage Coach or the Schooner?

Q. Any books or records.

A. Yes—I do not, but my attorney does.

Q. Your counsel has handed me three Manila-covered records. I will ask you to examine those and tell us what they are.

(Testimony of John Collins.)

A. The first one is a sales record; that one is a balance sheet; and that is the general journal.

Q. How far does the balance sheet go, how late?

A. I believe it is January 18, 1954.

Q. And how far does your general journal go?

A. I believe they all three go up to September 31, 1953. There is an extra sheet in the balance sheet.

Q. You discontinued keeping books, then, as early as January, 1953, at the very latest?

A. No.

The Referee: I think the record is quite clear. In January, 1954, there was an attempted sale of this business to Mr. Lichtenfeld. Lichtenfeld went into possession and remained in possession perhaps [112] until April or May.

Q. (By Mr. Tobin): Then, after he gave up possession there were these negotiations between the other gentlemen and Mr. Collins that were supposed to lead up to some kind of partnership or some kind of a corporation; and that is one of the big question marks of this whole case. Who operated the business after Lichtenfeld got out? Was it Collins or the other gentleman (Lefringhouse), or was it a partnership business? I will ask the question—who operated the business after the Lichtenfeld deal fell through?

A. Lefringhouse was the manager.

Q. Who was the owner?

A. Lefringhouse and myself.

(Testimony of John Collins.)

Q. What percentage of the income did Lefringhouse get? A. All of it.

The Referee: I think we went over that before. There appears to be no formal agreement of partnership—that is Collins' view of it—that he either owned the business in its entirety or as a partner. I think Lefringhouse's contention is he owned the business, or he owned the fixtures—no, he owned the business. After all, it does not seem to be in dispute that Lefringhouse and Collins executed a note in favor of Collins' brother in the sum of $4,100.00. Lefringhouse must be [113] getting someing, or must be entitled to get something for that note because he is being sued for it. Go ahead.

Q. (By Mr. Tobin): Now, taking up these insurance policies——

The Referee: One moment. I am going to make an observation. We are favored with the attendance of quite a few people. If any of the people are here as potential witnesses, it would seem to me we ought to begin to take care of them. Some of them may have been here on November 4th and were ordered back here. I don't know whether we will get through this afternoon.

Mr. Tobin: As far as I am concerned, he would be our last witness. If the Court wants to go ahead with the defense on the order I would make no objection.

The Referee: I would suggest that if you have any witnesses who might be on the stand only a few moments that you ought to take them out of

(Testimony of John Collins.)

order, without prejudice, that you might have after the petitioner's case is in, if you move for dismissal. Do you have any witnesses?

Mrs. Carver: Yes.

The Referee: I am going to insist you do that. I don't want to have the responsibility of telling these people to come back again if we can dispose of them this afternoon.

Mr. Tobin: It is perfectly agreeable to me.

The Referee: Mr. Collins may step down; and [114] any witnesses called by the alleged bankrupt, the fact they are called, shall be without prejudice to the right to move to dismiss on any ground.

(Witness excused.)

WILLIAM EDWARD ERNEST

a witness called by the alleged Bankrupt, being first duly sworn, testified as follows:

Examination

Q. (By Mrs. Carver): Mr. Ernest, are you acquainted with Mr. Lichtenfeld?

A. I am acquainted with Mr. Lichtenfeld.

Q. Is it Harry Lichtenfeld? A. Yes.

Q. What is your connection with him?

A. I was his accountant.

Q. Do you have the records pertaining to his negotiations for the purchase of the Stan's Stage Coach Stop?

(Testimony of William Edward Ernest.)

A. I do not have the escrow papers.

Q. What records do you have?

A. A complete set of books while Mr. Lichtenfeld was operating the bar.

Q. Do you have any cancelled checks delivered in connection with the purchase of the place? [115]

A. Mr. Lichtenfeld has brought several of his checks to court today.

Q. Is Mr. Lichtenfeld here? A. Yes.

Mrs. Carver: Then perhaps he would be the better witness. May this witness be excused?

The Referee: Is this to have the documentary evidence?

Mrs. Carver: I want to prove the payment of money outside of escrow.

A. If I may—will you excuse me for a moment—there is possibly two items Mr. Lichtenfeld does not have that the books of record show were paid.

The Referee: What are they?

A. A check, No. 2, made out January 19th, to Stanley Lefringhouse in the amount of $500.00 for inventory; and one on January 20th, made out to Stanley Lefringhouse, in the amount of $589.58. Now, those checks apparently are mislaid, or something; but, as you know, they can be secured—a photostatic copy can be secured from the bank.

The Referee: Were both checks on the inventory? A. Yes.

The Referee: Will you step down, Mr. Ernest, and let us have the other gentleman?

(Witness excused.) [116]

HARRY MARION LICHTENFELD

a witness, having been first duly sworn, testified as follows:

Examination

Q. (By Mrs. Carver): Mr. Lichtenfeld, some time in January, 1954, did you enter into some arrangement to purchase the Stage Coach Stop?

A. Yes, ma'am, I did.

Q. In connection with the purchase did you make arrangements to buy the stock in trade?

A. I did.

Q. How much did you pay for those?

A. For the stock?

Q. The inventory of liquor on hand.

A. The exact figure escapes me, but it was in the amount of, oh, I will say, $1,500.00 or $1,800.00. In fact, I have checks in my pocket to show the final balance, because it was one of those "String along" things.

Q. To whom did you direct the check?

A. To Mr. Lefringhouse.

Q. May I see the check you have?

A. Yes, I have several, in the amount of rent, and anything you want to see. Now, this check I am going to give you is the last check I gave him. Anyway, all these are endorsed by Stanley Lefringhouse, and were made out to him, as you can see. Here is the payment in full [117] on the balance of liquor and equipment inventory. These are also made out to Stanley Lefringhouse.

Q. (By Mrs. Carver): I will show you check No. 15, dated April 21, 1954, in the sum of $333.13,

(Testimony of Harry Marion Lichtenfeld.)

signed by Juanita F. Lichtenfeld, payable to Stan Lefringhouse. You have seen this check before?

A. Yes.

Q. Do you recall where you delivered it to him?

A. Yes, I delivered it to him at his liquor store out there. In fact, I dictated what there is on the back, in order to end all arguments.

Q. You are referring to this statement on the back, "Payment in full on balance of liquor and equipment inventory 13113 San Antonio, Norwalk, California.

A. Yes. That was final payment for that equipment and stock.

Q. Now, referring to check No. 19, April 2, 1954, payable to Stan Lefringhouse, in the sum of $20.58, signed by Juanita F. Lichtenfeld, have you seen this check before?

A. Well, I have seen all checks. All checks were cleared by me, but this $20.58 one escapes me right now, what it was for. Undoubtedly Mr. Ernest has an account of it in the books and can give full details.

Q. Would you say, looking at all these checks, [118] March 22, 1954, No. 164; No. 99, April 30, 1954; No. 66, April 16, 1954, were delivered by you to Mr. Lefringhouse? A. That's right.

Q. And where was the delivery made?

A. They were delivered on the premises. No checks were ever mailed; they were taken care of personally.

Mrs. Carver: That is all.

(Testimony of Harry Marion Lichtenfeld.)

The Referee: What do you want to do with the checks?

Mrs. Carver: I don't know whether I can take the checks. A. I have got to keep them.

Mrs. Carver: I will offer these in evidence.

The Referee: You had better remove them.

Mrs. Carver: May we photostat these copies?

A. There are several others I can bring in.

The Referee: The difficulty is, Mr. Lichtenfeld, we cannot tell from these checks themselves whether they relate to the purchase by you of the business or whether they concern purchases of merchandise which you may have made from Mr. Lefringhouse. This one for $20.58, April 2, 1954, what was that for?

A. Mr. Ernest could probably give you the answer to that. [119]

Q. What was the other one for, $184.00, March 22, 1954? That is for rent, three months, at $150.00, $450.00, less a loanout, $266.00; balance, $184.00, being the amount of the check; and here is another one, $61.26, April 16, 1954, payment on lights for February and March, $30.21, April 30, 1954, payment for power. It would appear that the payments made in connection with the purchase of a business by Lichtenfeld, the payments are a check for $500.00; $589.58; $333.13. The endorsement on that check is, "Payment in full on balance of liquor and equipment inventory at 13113 San Antonio Drive, Norwalk."

All right. I don't know whether all these checks

(Testimony of Harry Marion Lichtenfeld.)

are really material. Let us have this stipulation, counsel, on both sides, if you don't mind, that counsel may offer photostats of any and all checks; if, as and when he does so.

Mr. Tobin: So stipulated.

Mrs. Carver: So stipulated.

Q. (By Mrs. Carver): Mr. Lichtenfeld, your bookkeeper testified issuing checks for $500.00 and $589.58. Did you deliver those checks to Mr. Lefringhouse? A. I did.

Q. Where did you deliver those?

A. Well, at the premises. Everything was a personal operation; there was no mail; it was handed [120] to him in person.

Mrs. Carver: That is all.

Cross Examination

Q. (By Mr. Tobin): Mr. Lichtenfeld, showing you check No. 18, dated April 2, 1954, with the endorsement on the back, "Payment in full on balance of liquor and equipment inventory at 13113 San Antonio Drive, Norwalk," didn't that pertain to liquor in Lefringhouse's liquor store?

A. I believe it reads "Inventory," does it not? I am only saying what is written; it says, "Inventory."

The Referee: He is trying to identify what inventory it is. Let us see if we cannot clear it up. Juanita Lichtenfeld bought certain liquor for the purpose of continuing operations of the business in a certain place, is that right? A. That is right.

(Testimony of Harry Marion Lichtenfeld.)

Q. Now, this check says, "Final payment on liquor inventory."

A. That's right.

Q. What equipment does that refer to?

A. That was the fixtures and six chairs—I owed him for six chairs.

Q. You did not buy all the fixtures?

A. I bought the entire establishment. [121]

Q. Fixtures and all? A. Yes.

Q. For $333.13?

A. No. This is the final balance. He kept saying I owed him. I don't want to confuse the issue. There is a chattel held by Vista Escrow on all fixtures; but there happened to be five or six chairs in there which I had to include under this thing to finally end all argument.

Q. Don't we have anything in writing with respect to the purchase made by Juanita Lichtenfeld?

A. A written agreement at Vista Escrow.

Q. Is that available?

Mrs. Carver: I don't think it is complete.

The Referee: Well, is not there a written agreement?

Mr. Tobin: We might be able to clear up some of this right now.

Q. Did you have anything to do with an instruction in connection with this escrow?

A. Not too much.

Q. You told them what the facts were from your point of view?

A. We both did—Lefringhouse and myself took

(Testimony of Harry Marion Lichtenfeld.)

care of the entire situation. I was not aware of Mr. Collins until very late in the game. [122]

Q. Did you tell Vista Escrow there was nothing paid the sellers outside of escrow?

A. Where do you read that?

Q. Right in there (indicating).

A. I don't recall whether I said that or not.

The Referee: Well, gentlemen, don't we have something we can get in evidence to show what this deal was? One of our big problems is testimony to determine whether something belonged to Lefringhouse or to Collins or to Collins and Lefringhouse. What I would like to know is, who sold to Lichtenfeld? I want to see whether there is not something in writing. Who are the parties to that escrow?

Mr. Tobin: Stanley E. Lefringhouse and John A. Collins.

The Referee: Just the two of them?

Mr. Tobin: Yes, as sellers, and Juanita F. Lichtenfeld as buyers or corporation nominee. I do not have the foundation of this escrow.

The Referee: Let me ask Mr. Lichtenfeld—when you bought did you make a written agreement that went into escrow?

A. No; there was no written agreement. The escrow was held in Long Beach, the Vista Escrow, which is now defunct—it is here on Wilshire. This is part of the problem. The entire transaction was [123] carried on between Stanley and myself; and when I talked with him, we went to the escrow the following day.

(Testimony of Harry Marion Lichtenfeld.)

Q. Did Mr. Collins enter into the conversation with you about buying the place?

A. Never; and everything, as you can see, I believe was made out to Stanley Lefringhouse—all my checks show it, everything was paid to Mr. Lefringhouse.

Q. You gave up possession of the place when?

A. I can't say the exact date. It is on a rescission which is of record in the escrow.

Q. In April or May, 1954?

A. It must have been April or May—I think it was in June. I was in Hollywood, in another place.

Q. Did you get any of your money back?

A. No.

Q. (By Mr. Tobin): Did you instruct the Vista Escrow Company to include in the escrow the following: There is enumerated the items—furniture, fixtures, equipment, goodwill, lease, trade name, inventory, and so forth. Then it states that the only interest John Collins has is in the wholesale liquor license; that all funds due at the close of the escrow herein to the seller shall be paid solely to Stan Lefringhouse, with no monetary thing of any nature whatsoever [124] to John Collins.

A. I did not put that in there. In fact, I did not recall it was in there.

The Referee: Is that instruction signed by anybody, or is it signed by Lefringhouse?

Mr. Tobin: I do not have a copy which is signed.

The Referee: Where did you get that copy?

(Testimony of Harry Marion Lichtenfeld.)

Mr. Tobin: From the Vista Escrow Company, by mail, this morning.

A. The original is probably still in the escrow.

The Referee: Any further questions?

Mr. Tobin: Nothing further.

Cross Examination

Q. (By Mrs. Carver): Mr. Lichtenfeld, how much did you pay into the escrow?

A. $3,000.00 in the escrow.

Q. What was that to apply on?

A. That was to apply as down payment on the place.

Q. Did that include the stock in the inventory.

A. No. That was paid outside of escrow to Mr. Lefringhouse.

Mrs. Carver: That is all.

The Referee: Anything else? [125]

Q. (By Mr. Tobin): How much were you *paid* for this?

A. I believe the selling price was $15-5 or 16.

The Referee: Including the liquor license?

A. Yes.

Q. Plus the inventory? A. Yes.

Q. Now, do you make any claim for the return to you of any part of the $3,000.00?

A. We have not gotten to that yet. It is still laying in escrow. It has not been pulled down. We have made no lawsuits; we have made a full attempt to settle outside of court.

Q. Have you been here all afternoon?

(Testimony of Harry Marion Lichtenfeld.)

A. Yes—not all afternoon. I got here about 2:30.

Q. Didn't somebody say there was only $123.08 in the account? A. Yes.

Q. What do you mean by saying it is still there?

A. It is still in escrow. There was a point, whether I got $3,000.00 or they got $3,500.00.

Q. When you turned it back did you have any inventory on hand then? [126] A. Yes, I did.

Q. What did you do with it?

A. I turned it back to the boys. There was approximately twelve hundred and some dollars.

Q. Who walked in when you walked out?

A. They were both there, both gentlemen were there.

Q. Did you make an inventory of the items you had on hand?

A. Stanley and I took inventory, and Mr. Collins, I believe, as I recall, wrote it down. Then we totalled it and it was like I say, $1,200.00 and something, which has never come out.

Q. But you did take an inventory? A. Yes.

Q. Did you pass your right to the things there?

A. Yes.

Q. Did you get a receipt?

A. I have a copy.

Q. A signature thereon, acknowledging it?

A. No; that is where I made a mistake.

Q. (By Mr. Tobin): When you were operating at this location, under what name did you operate?

(Testimony of Harry Marion Lichtenfeld.)

A. Stan's Stage Coach Stop, Juli, Inc. That was our dba.

Q. What liquor license did you use? [127]

A. We were operating at the time under a transfer, a temporary license, which, of course, goes through that procedure; and our license had not cleared from Sacramento; and, consequently, we were operating under the temporary license, issued to Juli, Inc., pending clearance.

Q. In other words, you were operating under a temporary transfer of the Collins' license to you?

A. That's right.

Q. You finally got word you were not going to get a permanent transfer, is that right?

A. It was coming from Sacramento, it cleared transfer, and they pulled a rescission.

Q. Who rescinded?

A. Lefringhouse and Collins on a violation I had in the place.

The Referee: Any further questions?

Q. (By Mr. Tobin): Speaking of that rescission that you referred to, is this the rescission in writing they gave to you?

A. Yes, that is it. I was to deposit approximately $12,000.00 and release immediately, but I did not do it because I had no license.

Q. You are familiar with the signature of Mr. Lefringhouse?

A. Mr. Lefringhouse brought the document, he [128] could not get out there quick enough, and I would not release the $12,000.00.

(Testimony of Harry Marion Lichtenfeld.)

Q. He delivered it to you personally?

A. Yes.

Mr. Tobin: I would like to offer it in evidence.

The Referee: All right; Petitioning Creditors' No. 6.

Q. (By Mr. Tobin): Do you contend that you do not owe Mr. Collins anything?

A. I contend that I do not owe Collins or Lefringhouse anything.

Q. Well, Mr. Collins has listed among his assets, "Interest in moneys held in escrow re sale of liquor license to Lichtenfeld, $3,000.00." Is that disputed?

A. This dispute could be a point of law.

Q. You do not admit you owe Mr. Collins $3,000.00, do you?

A. Well, that is a disputed point. I don't know whether I owe him. I cannot let you put words in my mouth, because I don't know where I stand, myself.

Q. Well, the question is, do you admit you owe this alleged bankrupt, John Collins, the sum of $3,000.00?

A. Well, it is a difficult question, your Honor. You understand I am in a peculiar position. [129]

The Referee: If you will let me interrupt, I think you can answer that question.

A. You think I should?

The Referee: I think you should. It is a very simple question. Do you admit you owe John Collins any money at all? A. No, I do not.

Mr. Tobin: That is all.

(There being no further questions the witness was excused.)

WILLIAM EDWARD ERNEST

recalled to the witness stand, having been previously duly sworn, testified as follows:

Examination

Q. (By Mrs. Carver): You have heard the testimony as to the sums of $500.00, $589.58 and $333.13 for inventory? A. Yes, I did.

Q. Do your records show the payment of any other sums to Mr. Lefringhouse for inventory?

A. No, ma'am, our records do not show it. However, they are holding in abeyance certain records pending the closing of this escrow. As you know, your Honor, a complete set of books, meaning fixtures, assets, etcetera, cannot be set up until an escrow closes. There was a check, it was made out, a cashier's check, for [130] $500.00, paid on inventory.

Q. Is that the check you have testified to?

A. No, that was another one. There were three checks, totaling $1,500.00 and some dollars and one for $313.13.

Q. So that the actual payments were $1,922.63, that was all paid to Mr. Lefringhouse by Mr. Lichtenfeld for inventory?

A. Not all of it was for inventory. Ninety dollars was for six chairs. We have it separated in the books.

(Testimony of William Edward Ernest.)

Q. You may refresh your recollection from the records.

A. We will take the first two checks that the records show, that the check book showed where those two checks I mentioned, in the amount of $500.00, payable January 19th, and that was for inventory; payable January 20th, there was $589.58 payable for inventory. Then on April 2nd, I believe, a check was made for $313.13, of which $243.13 was for inventory, and $90.00 for equipment.

Q. (By The Referee): You say there were two checks for $500.00, January 19th?

A. No, there was one check made out January 18th, in the amount of $500.00, which was a cashier's check. [131]

Q. In other words, you drew the check to buy the cashier's check?

A. Mr. Lichtenfeld drew the check to buy a cashier's check.

The Referee: Anything else?

Q. (By Mrs. Carver): Do your records show whether or not any profits were made during the Lichtenfeld operation?

A. Yes. We had given Mr. Lichtenfeld monthly financial statements.

Q. Would your records reflect the profits during his operation?

A. These records I hold here; and if they were taken, balance sheets and profit and loss statements could be made from them, I mean, they would reflect in a profit.

(Testimony of William Edward Ernest.)

Q. You cannot tell offhand what the profit was?

A. No, because we had not closed out these records for the purpose of tax returns. However, Mr. Lichtenfeld does have a copy of the financial statement of the closing day.

The Referee: Anything else?

Mrs. Carver: That is all. [132]

Cross Examination

Q. (By Mr. Tobin): Was an inventory of the stock made in January?

A. Yes, sir. As a matter of fact, I believe I had the original copy of that inventory, and I believe it is in with the file at Vista Escrow.

Q. Then, there was another inventory made in April? A. In May.

Q. At the time that the business was surrendered? A. May 10th, yes, sir.

Q. And that inventory differed?

A. Yes, there was a difference between the beginning inventory and the ending inventory.

Q. The beginning inventory was considerably smaller than the closing?

A. The beginning was considerably—I won't say "considerably," but the beginning was larger than the closing.

Q. The beginning inventory was larger?

A. Yes.

Q. And the business was conducted in the meantime? A. Yes.

Q. And liquor was being sold over the bar and [133] dispensed? A. Yes.

(Testimony of William Edward Ernest.)

Q. Do you know whether or not any of the liquor in that closing inventory was the same liquor that was there at the beginning, in January?

A. That is entirely possible, that some of it would be the same.

Q. There is a regular turnover?

A. There is a regular turnover.

Mr. Tobin: That is all.

Redirect Examination

Q. (By Mrs. Carver): Did you have any connection with the operation of the business in an accounting manner after Mr. Lichtenfeld left?

A. I recommended the business for sale, yes.

Q. What was your recommendation as to value?

A. It was not what my recommendation was as to the value. It was what I felt that these people could afford to pay for it. I felt that the business, with the remodeling and everything that transpired between the time Mr. Lichtenfeld left and the time these people were interested, was in the neighborhood of $30,000.00.

Mrs. Carver: That is all.

Examination [134]

Q. (By The Referee): How long did you continue to have some contact with this particular location?

A. I had no contact with it. However, in my business, I am an accountant. At the time of my original contract with Mr. Lichtenfeld I was employed by E. L. Waltreus, of Vista Escrow Com-

(Testimony of William Edward Ernest.)

pany. I know the bar business, having worked for one of the largest public accounting firms in the United States. They do nothing but handle bars, cocktail lounges, hotels, and so forth. And, so, we built up, along with another gentleman, a public practice, and we occasionally are called upon to audit books by a potential buyer; possibly we may be able to recommend it for sale, that is, a good location, or that it has got potentialities.

Q. You did recommend or were prepared to recommend this place to somebody after Mr. Lichtenfeld got out? A. That is very true.

Q. Can you give us the approximate time?

A. I think I can. It was this last October.

Q. October, 1954? A. Yes.

Q. Now, between the time Mr. Lichenfeld got out and October, 1954, did you keep any books or records for that business for anybody? [135]

A. Not for the Vista Escrow Company, no.

Q. Now, you spoke about remodeling. To your knowledge was there any change made in that location during that period of time, between the time Mr. Lichtenfeld left and October, 1954?

A. Yes, they enlarged the room and made it a much nicer place.

Q. Have you any personal knowledge as to who did that? A. No.

Q. You just know the work was done?

A. Yes.

Q. Have you any personal knowledge as to who paid for it, if it was paid for? A. No.

(Testimony of William Edward Ernest.)

Q. Have you any personal knowledge who did the actual physical work? A. No, I have not.

Q. Or who the contractor was?

A. I did talk to one party at Laguna Beach, just prior to my examination of the bar, looking it over one afternoon; and he told me it had been done by some group of contractors, but I cannot recall the name.

Q. But, apparently, you had the impression that whatever was done had enhanced the value of the particular location? [136]

A. It had, yes, sir.

Q. In your judgment? A. Yes.

The Referee: Any further questions?

Redirect Examination

Q. (By Mrs. Carver): Did you make an offer to purchase it, either on your behalf or anyone else's behalf at or about that time?

A. Yes, we called up Mr. Lefringhouse. I believe it was in October, and I had a buyer from Laguna Beach, a gentleman whose accounts I have handled for two and a half to three years, and he was looking for another bar; and Mr. Lefringhouse told me the bar was not for sale.

Q. Did he make any offer? Did you get that far in the negotiations?

A. No. He was willing to go $30,000.00 for the place; but we were not able to establish any negotiations with Mr. Lefringhouse.

(Testimony of William Edward Ernest.)

Q. When you say "we," you mean the prospective purchaser who was willing to go $30,000.00?

A. That is correct.

Recross Examination

Q. (By Mr. Tobin): With regard to the physical improvements [137] there, Mr. Lefringhouse, as a matter of fact, made those improvements, did he not?

A. I do not know. I had no contact with Mr. Lefringhouse or Mr. Collins.

Q. Did you know him personally?

A. I believe I probably have seen him on one occasion or another when I was working for Mr. *Lefringhouse* on the books; but aside from that, no, sir.

Q. Did you know his landlord?

A. No, sir.

Q. Do you know whether or not Mr. Lichtenfeld had a master lease or a sub-lease over there?

A. Did you say Lefringhouse or Lichtenfeld?

Q. Lichtenfeld.

The Referee: Lichtenfeld was renting from Lefringhouse.

A. That is correct. I believe that would be a matter of record with the escrow.

Mr. Tobin: I wanted to find out if you had any record at all, as to whether or not Mr. Lichtenfeld had a master lease or a straight lease, or sub-lease.

A. I don't know.

Q. You have no record of that? A. No.

(Testimony of William Edward Ernest.)

Q. And you don't know when it was they made those improvements? [138] A. No.

Mr. Tobin: That is all.

(There being no further questions, the witness was excused.)

ARTHUR IRWIN RATHMAN

a witness, being first duly sworn, testified as follows:

Examination

Q. (By Mrs. Carver): Are you acquainted with Stanley Lefringhouse and John A. Collins?

A. Yes.

Q. Are you familiar with the place of business known as Stan's Stage Coach Stop?

A. No, when I worked there it was just "Stan."

Q. During what period did you work there?

A. From about July, 1954, until it closed.

Q. (By the Referee): That would be December, would it not? A. Yes.

Q. What was the nature of your work?

A. Bartender.

Q. (By Mrs. Carver): During that period of time what would you say as to the trade, was it very busy, or what?

Mr. Tobin: Objected to, immaterial. [139]

The Referee: I cannot tell. I think he can tell whether it was busy or not.

A. At times it was a pretty good business.

Q. (By Mrs. Carver): You are not familiar

(Testimony of Arthur Irwin Rathman.)

with what the daily receipts were, or were you familiar with what the daily intake from the bar was?

A. Not all the time, no. I know about what it was.

Q. What would you say would be an average a week?

Mr. Tobin: Objected to, immaterial.

The Referee: I don't know what we are getting at.

Mrs. Carver: I want to prove whether or not there was any extensive business during the time Lefringhouse operated this business.

The Referee: What difference would it make?

Mrs. Carver: I don't think very much.

The Referee: I don't think it makes any difference at all. The question is, who owns it now. That is our main problem.

Mrs. Carver: It may be a basis for impeachment of Mr. Lefringhouse's testimony.

The Referee: What part of his testimony?

Mrs. Carver: That there was no progress made, but I doubt if we could prove it. [140]

The Referee: If Collins was not the owner, the matter of profit is immaterial. If he was the owner, it is the value of the date I have already mentioned. Is there anything else?

(There being no further questions, the witness was excused.)

Mrs. Carver: That is all. We rest. [141]

The Referee: This is probably the most confused inventory case we have had here for a long time. It would appear on the face of the record that the only thing of consequence is the solvency or insolvency of Mr. Collins as of about August 5, 1955. Of course, if he was solvent on August 5, 1955, that ends his case, because then there was no fraudulent transfer. The chief issue is really his solvency or insolvency. There is no question at all but what Mr. Collins transferred property of value without consideration; and if he was insolvent at the time it was fraudulent. His only defense to it would be that he was solvent on the date when the involuntary petition was filed.

Now, ordinarily the court does not have too much trouble in determining insolvency. The court can usually determine approximately the liabilities and approximately the value of assets. But the problem in this case is what were assets and what were not assets. In other words, we are required apparently to do the thing here which ought not to be done in a bankruptcy proceeding.

You will remember that Congress tightened up the law as to petitioning creditors. The petitioning creditors have to have a certain status before they will be permitted to throw a fellow citizen into bankruptcy, so that there can be no question about their credit or position. We had cases sometimes in the real old days where persons who were not, in fact—a creditor at least—not qualified [142] exactly to the amount required, who would succeed in throwing a person into bankruptcy; and the appel-

late court would reverse. We have something of the same sort here.

The liquor license unquestionably belongs to Mr. Collins. But what about the rest of this business? We have to determine whether it belongs to Mr. Collins or Mr. Lefringhouse; or whether it belongs to Lefringhouse and Collins. Now, we are going to decide that apparently without Lefringhouse being before the court; yet we are making a determination that so far as this bankruptcy proceeding is concerned it belongs to one of the three, and we could have this peculiar situation: we could have this court ruling that it belongs to John Collins and it is therefore an asset to be taken into consideration in determining the question of solvency; and we could have a ruling by the court that he was insolvent, and we could have an adjudication in bankruptcy; we could have the trustee attempting to take it over from Lefringhouse, and Lefringhouse refusing to yield possession or title; we could have the trustee suing Lefringhouse; and we could have the judge saying it does not belong to the trustee in bankruptcy—it belongs to Lefringhouse.

Now, I don't know whether Congress ever intended that kind of a situation to arise in a bankruptcy proceeding. And, so, before we spend a lot more time in hearing [143] witnesses, I am going to have an "in-between", pretrial conference on this thing, solely from a legal standpoint and determining just exactly what our problem here is and what we are going to do with it. Then we will agree on as many things as can be agreed upon and take evi-

dence on the rest, because I think Mr. Tobin and Mrs. Carver, particularly Mr. Tobin with all his experience in North Dakota and South Dakota will say this is about as mixed-up an involuntary case as he ever got himself snarled into.

Mr. Tobin: I do.

The Referee: So, we are going to find out here what we have got. Here is the thing that concerns me—apparently one sure thing that Mr. Collins had was the liquor license. He deposited that under the rule stated here along about last February. He had the license as a valid license for six months. In the six months' period he filed an application for a transfer, which will be nullified and set aside in the event that the petitioning creditors prevail.

Query—is there still any license of any value? I think you had better put one of the liquor-law lawyers on that, and find out what is going to happen if a trustee is appointed here and he does attempt to take over all rights under this liquor license what he can do [144] with it, if anything; or whether the Board of Alcoholic Beverage Control will take the position there just is not any more license, it has expired. And also remember this—it is the impression of this court that the transfer involved in the application is void as a fraudulent conveyance; but does the judgment of this court automatically set it aside; and will the trustee in bankruptcy have to sue this person to whom the transfer was made, which is a part of the application for transfer? And if he does how long is that going to take; and if he does succeed in that, by

that time will the license have any transferrable rights left; but, of course, there are not any really transferrable rights—the so-called purchaser merely asks it be transferred. The trustee in bankruptcy has no power to actually transfer it.

And, so what about these other witnesses here now?

* * * * *

Does anybody represent Mr. Lefringhouse?

Mr. Forrest: Yes, I do. * * * * *

The Referee: You may require further testimony from Mr. Lefringhouse because this question of ownership is very much confused; and, incidentally, I am afraid that we do not have all of the written instruments that we would like to have in situations like this.

Mr. Tobin: I am going to bring Mr. Waltreus.

The Referee: I don't think that will be necessary. [145] However, if Mrs. Carver feels she would not be able to stipulate——

Mrs. Carver: Yes, of course, that can be done.

The Referee: Now, then, what I have in mind—I am going to excuse the witnesses. What about next Monday, November 21st for an "in-between" conference? There will be no other evidence; but anybody that wants to be here and listen to what is said—everything will be said right out in open court—anybody who wants to come will be welcome. [146]

[Endorsed]: Filed Nov. 21, 1955.

[Title of District Court and Cause.]

Monday, December 5, 1955

JOHN COLLINS

a witness, having been previously duly sworn, testified as follows:

Mr. Tobin: I am calling this witness under the provisions of Section 21-J.

Examination

Q. (By Mr. Tobin): You just heard Mr. Stern and Mr. Harris testify regarding the money you had on hand you could have paid the local creditors off with on the date of filing of the petition.

A. I heard the testimony.

Q. What is the fact with respect to that?

A. I believe there was a misunderstanding.

Q. What did you say?

A. Well, we got talking whether I knew that they filed a bankruptcy against me. I said I did not know they had for several days afterwards; that I was down in Los Angeles one day, or in the Internal Revenue Office at the time I was notified that there had been the filing. Mr. Weston had called Mr. Martinetti and told him I was in bankruptcy, and it was at that particular time that I became aware of it. I was talking to another man in [148] the Internal Revenue, going to make payment to the Internal Revenue of approximately $2,000.00 that day, to cover the taxes. They said Mr. Martinetti and Mr. Gruenwald figured it up, and would take $2,000.00, to wait until the tax arrangement had been decided,

(Testimony of John Collins.)

as to how much I owed and how much Mr. Lefringhouse owed them. Now, that is perhaps where they are confused. I said if I could make the arrangements, with a deposit of $2,000.00, and go ahead and put it up as collateral, to go ahead with the rest of my plans, that I would at that time make an arrangement with creditors, all the creditors up to that date, and come to a settlement as to how much I owed and how much Lefringhouse owed, I would make payment, but I could not make payment of everything all at once, because I only had that money to pay the Internal Revenue.

Q. Whereabouts were you, physically, at the time that you came in here and talked to the Internal Revenue Department about your tax difficulties? A. Home.

Q. Physically at home, were you at the beach or in Whittier? A. In Whittier.

Q. You were not out at the beach around that time?

A. I was at the beach the following week, or [149] the following month.

Q. You remember calling Mr. Weller a day or so after the petition was filed, don't you?

A. I called Mr. Weller on the phone, I think it was on the following Thursday—I think they filed it Monday, and the following Thursday I called him.

Q. You told him you were staying at the beach, did you not?

(Testimony of John Collins.)

A. I was at the beach at the time, or I was going.

Q. You told him, also, you would make it a point to be at Whittier and accept service on the involuntary petition, did you not?

A. I asked him if I would be served, what would happen. He told me the United States Marshal would be out to serve me, and how could I locate the man, because maybe I won't be home. And I called the Marshal and told him where I was at that particular time, and I would be down to meet him—which we did. He set a time, and I said, "I will meet you at the house," at such and such a time; and he went ahead and gave me the papers. I think that was on the following Saturday or Sunday, because he said he didn't have the papers ready.

Q. Later you filed a petition to dismiss the creditors' petition, without an attorney?

A. Yes. [150]

Q. Now, then, you set up in the Answer that you were solvent. I believe you put in some insurance policies with a value of $1,700.00.

A. I believe so.

Q. And in response to a direction by the Court you brought the insurance policies up to the Receiver? A. The next day.

Q. Now, isn't it a fact that most of these insurance policies that you claim a cash surrender value on are policies on somebody else's life?

(Testimony of John Collins.)

A. They are policies on my children's lives, if that is what you are referring to.

Q. And you are claiming the cash surrender value on policies on your children's lives?

A. Yes. Can't I? I pay it. I believe I am beneficiary on the major portion of them.

The Referee: Just a moment. Let us not have any argument; just let us have the facts; let us identify the policy in the record and then we can determine whether John Collins has the right to secure a cash surrender value; let us not take the time right now; let us get the facts.

Q. (By Mr. Tobin): Showing you a policy No. 16,245,450, issued by the Metropolitan Life Insurance Company of New York, on the Life of John R. Collins, who is John R. Collins? [151]

A. My son.

Q. Give us his age. A. Sixteen.

(Reporter's notation): Here follows detailed testimony with respect to the insurance policies, and other assets, including the household furniture, liquor, television, records. The reporter is omitting same from the record unless and until it is called for later.) [152]

Q. Now, did you pay any taxes on the equipment in that bar during the years 1954 or 1955?

A. What kind of taxes?

Q. Any kind.

A. I did through the medium of Mr. Lefringhouse.

Q. Mr. Lefringhouse has paid the taxes?

(Testimony of John Collins.)

A. That is true. He used my money to do that.

Q. What do you mean by using your money? Did you give him the money?

A. He took the money out of the register for the general run of the bills in the business.

Q. Now, in whose name did the title to the equipment in that bar stand?

A. Well, that would be pretty hard to determine, in a way. A lot of it was bought from a lumber company and brought in and installed. I don't know that you would have a name on it, for that type of equipment.

Q. Who is holding the lease?

A. The master lease is held by Mr. Lefringhouse, I believe.

Q. How much rent have you paid on those premises since August 22, 1955?

A. Since August 22, 1955?

Q. Yes. A. I am not paying any rent.

Q. How much rent have you paid on those premises [153] at any time during 1955?

A. The money came out of the register.

Q. I am talking about you.

A. When you talk about me, that was my money in that register.

The Referee: That matter is in the record. Mr. Collins has not paid any rent except through the medium of Mr. Lefringhouse, through cash which resulted from operation of the business, which never came into his possession; he personally, directly, did not pay any rent. That is in the record.

Mr. Tobin: That is all.

The Referee: Let us take the noon adjournment.

Mrs. Carver: I have a witness here from the bank who will only take a few minutes.

The Referee: All right.

MRS. TEMPERANCE BAILEY

a witness, having been first duly sworn, testified as follows:

Q. (By Mrs. Carver): During 1951 were you connected with the Bank of America in Whittier?

A. Yes. [154]

* * * * *

(Whereupon, a recess was taken until 2:00 o'clock this day, at which time the following proceedings occurred):

Mr. Tobin: I would like to ask Mr. Collins a few more questions.

JOHN COLLINS

having been previously sworn, testified further as follows:

Q. (By Mr. Tobin): When you came out from New York and bought this furniture, from what source did the money come that you bought the furniture with?

A. It come out of my bank account.

Q. Your bank account? A. Yes.

Q. That you earned? A. Yes.

Q. And from what source did the money come that went into your home?

A. My bank account.

Q. Your bank account?

(Testimony of John Collins.)

A. Yes. I say "my"; I will say mine and my wife's.

Q. That you had earned since marriage?

A. Oh, yes.

Q. And with regard to the insurance policies, with the exception of this Columbia policy, in Boston, out [155] of what source were the premiums paid on those policies?

A. I paid them; I paid them to the insurance companies.

Q. And these premiums were paid out of your own earnings?

A. Yes, I would say so.

Q. And subsequently to your marriage the premiums on the Columbia policy were likewise paid out of your earnings?

A. I believe so. Wait a minute—my father originally had that policy. We got that policy from my father, after we were married.

Q. And who paid the premiums?

A. Previously or after?

Q. After.

A. I paid them after that—my wife and I.

Q. Out of what source?

A. Funds we earned.

Q. You earned? A. Yes.

Mr. Tobin: That is all.

The Referee: I assume you do not want to cross-examine at this time?

Mrs. Carver: No.

(There being no further questions, the witness was excused.) [156]

STANLEY E. LEFRINGHOUSE

a witness, having been previously duly sworn, testified further as follows:

Q. (By Mr. Tobin): Mr. Lefringhouse, with regard to the bar fixtures at No. 13113 South San Antonio, Norwalk, California, who paid for those bar fixtures?

A. I did, out of my own funds, money I borrowed myself.

Q. Did you take any money out of the cash register in 1955 that belonged to Mr. Collins?

A. No.

The Referee: Wait a minute. You were the manager for Mr. Collins, were you not?

A. That is true.

Q. And whatever money you took in, into the cash register, you paid out? A. Yes.

Q. Who paid the taxes during 1955 on those fixtures?

A. Well, the taxes that were due, the first Monday in March, 1955—Mr. Lichtenfeld was there at the time, and due to the escrow, there was a mixup. They were due in March, 1954; and, so, in about February, 1955, the next thing I knew they were way overdue, and the Government came to me and said that as long as the fact that my fixtures [157] didn't go through the escrow, with the Lichtenfeld deal, that I was liable for the taxes—in February, 1955, it seemed like I paid $180.00 and I included penalties and everything, because they were late. They were due in March, 1954, and I had to pay them in February, 1955.

(Testimony of Stanley E. Lefringhouse.)

Q. Did you pay them out of your pocket?

A. Yes, I did; and right after that, in March and April, they were due again, and I paid them again for the year 1955, when they were due and payable, the first Monday in March, 1955; and, so, this year I have had to pay twice.

Q. Who has paid the rent on the premises at 13113 South San Antonio, Norwalk, during the year 1955? A. I have.

Q. Who paid it during the year 1954?

A. I did.

Q. Did Mr. Collins ever pay any of the rent over there?

A. He paid the first and last months' rent—he paid two months in the year 1953—$450.00, as I recall.

Q. To whom? A. To me.

Q. Do you know of anything over there, in the place at 13113 South San Antonio, Norwalk, that, in your opinion, belongs, or that any interest therein, belongs to [158] Mr. Collins?

A. No, there is nothing. I notice in the list of liabilities there is one lumber bill they sent him, which, I don't know how much it is, and that was a mistake. That is the only item, that bill there, should be my bill—the Norwalk Lumber Company.

Q. What did it amount to?

A. I don't know—$100.00, or something—unless he ordered some lumber for himself, at his house, but that should be my bill.

Q. What was it for?

(Testimony of Stanley E. Lefringhouse.)

A. Well, we were going to build a patio—I was going to build a patio there, and my landlord talked me out of it. That lumber was for the patio, and it was never built; and my landlord talked me into this deal where I added on the back, built a whole building.

Q. Do you know what became of the glassware that was in that bar?

A. No, I wouldn't know what became of that glassware. Today was the first day I ever heard Mr. Collins mention some glassware.

Q. Had there been glassware in the bar prior to his going in out there?

A. Yes; there has always been glassware in there.

Q. Did he let you know he was taking it out?

A. No.

Q. Did he let you know he was taking liquor out?

A. No, not the one day when I was not there,—he came over and took the license and took the liquor, and then he came back the next day, and that day, why, he didn't let me know right away, but after he got in there I came at the time he was there, and then I knew he was taking it out. I didn't stop it.

Q. Did he take it out with your consent?

A. Yes, he did.

Q. Did you know where the liquor went?

A. No, at that time I didn't know where he was taking it. He did not take an inventory, or any-

(Testimony of Stanley E. Lefringhouse.)

thing—no inventory at the time he took it out at all.

Q. Is there any liquor left there now?

A. No, none.

Q. Could you describe to the best of your ability what fixtures are there that are in that place at the present time?

A. Well, there is two built-in bars and a built-in piano bar; and there is a built-in, a large built-in cage, for keeping parakeets, and a built-in place for natural flowers. Then, there is some booths; and about, I would say, twelve tables to go in front of those booths—about twenty-four chairs to go in [160] front of the booths. There is approximately fourteen bar stools. I am just estimating this, and chairs around the piano bar and the other built-in bar, there is about thirty chairs. Then there is some couches and a rug; light fixtures; two back bars and two bar boxes, dry beer; and three jockeys, where you put ice, and a sink. In the kitchen there is a deep freeze, a large stove with an oven, a French fryer, a steel table, a slicer, a regular, level sink; two or three tables, equipment like pots, pans and ladles. A Neon sign outside that says "Cocktails." There is a Neon sign on top, and that says, "Stan's Bar." Naturally, a lot of items I have forgotten.

Q. Who paid for the equipment that could be removed from the building without damage to the building? A. I did.

Q. And what, in your opinion, would be the reasonable market value of those fixtures and that

(Testimony of Stanley E. Lefringhouse.)

equipment, given a purchaser who was willing to purchase, on reasonable notice, a seller who was willing to sell, on reasonable notice, and excluding a forced sale?

A. Well, in other words, you just mean to sell the equipment right out?

Q. Under the hammer.

A. It would not bring in over, I would estimate, $1,500.00—$1,000.00 to $1,500.00 that way. [161]

Q. Do you claim the exclusive ownership of that equipment? A. I do.

Mr. Tobin: You may cross-examine.

Cross Examination

Q. (By Mrs. Carver): Mr. Lefringhouse, you stated you had paid the rental on the cocktail bar?

A. Yes; I had the master lease and I paid the whole thing.

Q. From what source did you take the funds to pay the portion of the rental on the cocktail bar?

A. From the liquor store.

Q. Did you take it out of the register during the operation of the business? A. No.

Q. Did you charge the operation of the business with any portion of the rental? A. No.

(Mrs. Carver showing document to Mr. Tobin.)

Mr. Tobin: I am wondering why these books and records were not turned over to the Receiver.

Q. (By Mrs. Carver): Mr. Lefringhouse, in July, 1954, is it your contention that Mr. Collins

(Testimony of Stanley E. Lefringhouse.)

had no interest in the fixtures? A. Yes. [162]

Q. I will show you notice of intended mortgage, reading: "Notice is hereby given: That John Collins and Stanley E. Lefringhouse, Mortgagor, whose address is 13113 South San Antonio, in the City of Norwalk, County of Los Angeles, State of California, intends to mortgage to Lawrence Collins, Mortgagee, whose address is 7420 Duchess Drive, in the City of Whittier, County of Los Angeles, State of California, all fixtures and equipment of a certain tavern and cafe business known as Stan's Stagecoach Stop, and located at 13113 South San Antonio, in the City of Norwalk, County of Los Angeles, State of California."

Now, does this notice of intended mortgage cover all fixtures in that place of business?

A. This was when John Collins was going to sell the license to me, which I have explained in this court before; and I was going to mortgage this equipment; and he and his brother talked me into an agreement where I make a note and mortgage to his brother, and he and I would sign it and his brother could discount the note, and with the mortgage get the money immediately. That deal never went through. Mr. Collins would never go into escrow with the liquor license, and I never would go through with the mortgage.

Q. Is that your signature?

A. Yes. That is an intended mortgage, but it [163] was never mortgaged.

Mrs. Carver: I would like to have it marked.

(Testimony of Stanley E. Lefringhouse.)

The Referee: Bankrupt's Exhibit No. 1.

Q. (By Mrs. Carver): Were the books and records of Stan's Stagecoach Stop kept under your supervision? A. No, not altogether.

Q. Who kept the books and records?

A. In the year 1953 there were no books or records for either the liquor store or the bar; and, so, when we got to about October, 1953, we just got everything together and gave to Mrs. Hartke, and she tried to decipher them, a lot of things there she put down on the books. She did not know which to charge to, the liquor store or the bar.

Q. You mean that everything was thrown together?

A. Yes, I just gave it to her.

Q. You have seen this statement before, have you not? A. Yes.

Q. Now, under this statement of "Rent," $1,500.00 and $300.00, a total of $1,800.00, will you explain what that covers?

A. She took the rent—at that time the master lease—I was paying $150.00 a month rent, and [164] *the* just took each rent receipt and put it there. Mr. Collins was supposed to pay me $225.00, which would be more than that, but he never paid me.

Q. This is a profit and loss statement of Stan's Stagecoach Stop, by you?

A. What do you mean?

Q. As manager.

A. Yes. During that period I was manager, but

(Testimony of Stanley E. Lefringhouse.)

this lady, she did not know which went to which, and she was all mixed up, and she knew it was not right.

Q. Do you know what this item of rent is?

A. It is not correct.

Q. During this period in 1953 what rent was paid for the cocktail bar? A. By who?

Q. In connection with the liquor store?

A. In connection with the liquor store?

Q. I mean the cocktail bar.

A. In the year 1953 Mr. Collins paid me $450.00 rent—period.

Q. Yes on this statement there is this item of charge.

A. Yes. I saw the slip where the rent had been paid to the landlord, at $150.00. She did not know [165] where to put it and put it in there. There are a lot of items that should be on the bar and some items on the bar which should be on the liquor store.

Mrs. Carver: I will offer this as the next exhibit.

The Referee: Bankrupt's Exhibit No. 2.

For the sake of the record, Mr. Lefringhouse, under what name did you run the liquor store?

A. "Stan's Liquor Store."

Q. (By Mrs. Carver): I will show you a general journal of Stan's Stagecoach Stop, and it has no name on it, but it is a list of equipment, bar, booths, et cetera, and ask you if this forms a part of the equipment in the cocktail bar?

(Testimony of Stanley E. Lefringhouse.)

A. It forms part of the equipment, yes.

Q. Can you state when that equipment was purchased, as to whether it was before or after Mr. Collins became associated with you?

A. All the stools were purchased before. The bar was made to order before. The rest rooms were there before. The partitions were there before. The lights were there before. This was just before Mr. Collins was associated with me. Is that your question?

Q. No, I am asking when they were purchased. I will change my question. Were those items purchased after you and Mr. Collins commenced business?

A. After. Mr. Collins and I did not commence [166] business together.

Q. You might call out from this list the items purchased after Mr. Collins was connected with Stan's Stagecoach Stop.

A. After he was connected with the—he put the liquor license in there in June, 1953; the stools were right in there, and the booths; the boxes, the storeroom—I don't know what the storeroom is. The rest rooms were there. The partitions were there. This was all before Mr. Collins was there—the walls, the dance floor, I don't recall.

Q. As a matter of fact, these were put in, were they not, during the early part of 1953, preparatory to Mr. Collins coming in?

A. Some of them.

(Testimony of Stanley E. Lefringhouse.)

Q. Will you call off the items which were put in there during 1953?

A. During 1953 all these items except the stools, the bar. There was a beer box there already. The booths were made over. There was one jockey box. You have listed one. There were three. One jockey box was there before. The rest rooms were there before; the partitions; the lighting. Most of the asphalt tile floor was there in the year 1952.

Q. The items that were purchased in 1953, preparatory to Mr. Collins coming into the business, [167] who paid for those items?

A. I did.

Q. From what source?

A. I borrowed money from an attorney named Joseph Shane, of Los Angeles, $2,500.00, and paid for the equipment.

Q. Did you take any of the money out of the cash register in the operation of the business?

A. I did not.

Q. Did you make any payment of any sort with any funds in connection with the cocktail bar for the purchase of the equipment?

A. Not that I recall, not at all, no.

Q. I notice a total here of $5,179.00. Was that the valuation placed on those fixtures at the time?

A. I would not know that, because all the fixtures were not there.

Mrs. Carver: I want to offer this.

The Referee: Bankrupt's Exhibit No. 3.

(Testimony of Stanley E. Lefringhouse.)

Q. (By Mrs. Carver): During 1953 were the premises remodeled? A. Yes.

Q. During what month was that, do you recall?

A. It extended over three or four months, off and on.

Q. You don't recall whether the early part of [168] the year or when?

A. Right at the early part of the year, January; and I would say it went on until June or July, but not steady.

Q. Who paid for the remodeling?

A. I did.

Q. Did Mr. Collins pay any part of that?

A. No.

Mrs. Carver: That is all.

(There being no further questions, the witness was excused.)

Mrs. Carver: I wonder if I might call a witness out of order.

The Referee: You may.

DONALD H. McADAMS

having been first duly sworn, testified as follows:

* * * * *

JOHN COLLINS

resumed the witness stand and testified further as follows:

Examination

Q. (By Mrs. Carver): Prior to coming to California where did you [169] live?

A. Niagara Falls, New York.

(Testimony of John Collins.)

Q. At the time of your marriage to Ada Collins, did you have any moneys of your own?

A. No.

Q. You accumulated money, did you, after your marriage? A. Yes.

Q. Where did you keep those moneys, in the State of New York?

A. Usually; well, some at home and some in the bank.

Q. Where did you live, or, where do you live now?

A. 10423 Townley Drive, in Whittier.

Q. That place was purchased, was it, after you and Mrs. Collins came to California?

A. That is true.

Q. From what source was the money obtained to purchase that property?

A. From the bank—the Power City Trust Company—a bank in Niagara Falls, New York.

Q. Those were funds that were accumulated through your earnings, during your marriage?

A. Yes, and my wife. The account was in the name of John A. and Ada J. [170]

Q. What was the purchase of the real property?

A. $13,100.00.

Q. After the purchase price of the property were any improvements made on the same by you and Mrs. Collins? A. Yes, there was.

Q. Would you state what improvements were made.

A. Between the house and the garage, there was

(Testimony of John Collins.)

a patio built there, about 16 by 22; a fireplace on the patio; a roof over it; a small door cut through the garage, so that we would not have to open the big door; there were flood lights in the patio that was there originally, and one I built. I put the lights in and the wall plugs, electric sockets now out there, and the lights out on the sidewalk-way going outside, two-way switches on them; fluorescent lights in the garage; a water softener; I had a guest room; and flood lights in the back yard, and plugs out to the other patio.

Q. What is your estimate of the amount paid by you in these alterations?

A. Everything about $2,000.00.

Q. What is your opinion as to your value of your home today?

A. I think it is worth at least $15,000.00.

Q. I will show you here a grant deed, dated December 7, 1951, to Ada J. Collins, a married woman, and ask you if that covers the property where you and Mrs. [171] Collins now live.

A. Yes, it does.

Q. Did you instruct the escrow department handling the transaction for the sale of this property to place the title to the property in the name of Ada J. Collins? A. No.

Mr. Tobin: Objected to, attempting to vary the terms; hearsay; incompetent, irrelevant and immaterial.

Mrs. Carver: Your Honor, I was asking if he instructed that the title be placed as it appears.

(Testimony of John Collins.)

The Referee: You are asking for a conclusion.

Mrs. Carver: I asked what he did.

The Referee: No, you asked if he instructed. It calls for a conclusion.

Q. (By Mrs. Carver): Mr. Collins, at or about the time the escrow was opened in connection with the sale of this property, did you have any conversation with a Mrs. Bailey, the escrow officer at the bank? A. I did.

Q. Who were present at the conversation?

A. Well, at the first one there was Mrs. Hogin, my wife and myself, and Mrs. Bailey—the four of us.

Q. Was there anything said at that time about the escrow?

Mr. Tobin: Objected to, hearsay insofar as these petitioning creditors and all creditors of the alleged bankrupt [172] are concerned; a self-serving declaration; incompetent, irrelevant, immaterial. I would think it alters the terms of a written instrument.

(Discussion.)

The Referee: It does not alter the terms of the written instrument at all. The written instrument—the escrow instruction—is signed by the wife?

Mr. Tobin: Yes.

The Referee: This was for vesting of the property in the wife. It does not vary it in the slightest degree. Objection overruled.

Mr. Tobin: Subject to a motion to strike?

(Testimony of John Collins.)

The Referee: Yes. Tell us what the conversation was.

A. We got to talking about buying the house there, and I had just come to California. I had explained to Mrs. Bailey, the escrow officer, that I had paid $100.00 down on this house. My wife had seen it and she liked it and I liked it, we were all happy. We agreed on the price, $13,100.00. This was just before Christmas, I don't remember what date it was, but about the 17th, I think, and we wanted to try to move in before Christmas so that the kids could have a tree and everything. Mrs. Hogin was objecting to us moving in unless we could prove we had enough money to buy the house—we had to put up some $5,000.00 difference from what was owed on it, to [173] make the arrangement. I was going to just give them a check on it. She said if I could put the $5,000.00 in the bank she would let us move in before Christmas. Well, the bank objected to the check, because it was a personal check on the Power City Bank, and they said, "How do we know whether you have any funds there?" I said I would call the bank by telephone and, "They will tell you." They said, "No," they could not do that because I could draw it out before this check got over there.

Mrs. Hogin's husband was in Arizona at the time, and he was very skeptical about it, because they had the property sold at one time and they found out the man did not have funds; and she was still insistent upon the fact; and the only thing we

(Testimony of John Collins.)

could figure out—it was Christmas time, with the Christmas mailing rush; and I said, "If I went over and got the money would you let us move in?" She said, "I don't care as long as you put up the $5,000.00." I said, "All right, I will do that." I went and I got the money and brought it back to the bank—it came from the Power City Trust Company, $5,000.00. As a matter of fact, I think I got a cashier's check, or a certified check, one of the two, to make sure when we got it through their hands they knew it was good.

Mrs. Bailey said something about community [174] property, and asked me if I knew what it was all about; and she said, "If you want to put this property in your wife's name, that is, it is her property and you have nothing to do with it, you will have to sign off these extra papers they have in the bank, or the title company," she said, would not issue the title.

I said I did not want it to be her separate property; it came from our life savings, it belonged to all five of us, my wife and three kids. Anyway, she went ahead and my wife signed the paper and made the arrangement with the title company, they insured it on the assumption it was community property.

Well, the question came up after the escrow was over—we had moved in the house, and someone had told us, "If you live in the State of California they give you a thousand dollars' worth of exemption in your taxes, if you are a Veteran." And, so,

(Testimony of John Collins.)

I applied for it—my wife went down and asked about it.

They said, "You will have to bring the veteran in with you," because the house was in her name; and so we did—we went to the place and signed up. I was assuming responsibility for the tax the same as Ada. The house was put in her name for convenience of signing papers in a quick transaction, so that she could move in. They went ahead and grabbed the thousand dollar exemption, and I have been getting it all the time, [175] ever since we got the house.

The Referee: Take the witness.

Cross Examination

Q. (By Mrs. Carver): Mr. Collins, I will show you the 1953 Veterans Exemption Application of John A. Collins, dated March 11, 1953. Does this apply to property in which you live?

A. That is true. That is the receipt they gave me.

Mrs. Carver: I offer that in evidence.

The Referee: It will be Bankrupt's Exhibit No. 4.

Q. (By Mrs. Carver): I will show you tax statement H. L. Byram, Tax Collector of Los Angeles County, covering Lot 19, Tract No. 16868. Is this the property in which you and Mrs. Collins live?

A. That is correct.

Mr. Tobin: I will object to this. The taxes can

(Testimony of John Collins.)

be paid by somebody else. It says the taxes were paid by Glendale Federal Savings and Loan Association.

Mrs. Carver: I might clarify that.

Q. Did the Glendale Savings and Loan Association carry any encumbrance on this property?

A. They did at one time.

Q. The taxes may have been paid through them. Did you pay the taxes through the Glendale Savings and [176] Loan Association?

A. That's right.

Q. This tax bill shows the property assessed to "Collins, John A. & Ada, 10423 Townley Dr., Whittier, Calif." This is the tax bill for 1952. I offer that.

The Referee: Bankrupt's Exhibit No. 5.

Q. (By Mrs. Carver): Did you at any time enter into any agreement with Mrs. Collins that the property where you now live was her separate property?

Mr. Tobin: Objected to, attempting to vary and alter the terms of a written instrument; hearsay, incompetent, irrelevant and immaterial.

The Referee: Calls for a conclusion of the witness. Objection sustained on that ground.

Mrs. Carver: Your Honor, I wonder if I may have Volume 111 of the California Appeals.

The Referee: Yes; what has that to do with the pending question?

Mrs. Carver: It shows what evidence is permissible.

(Testimony of John Collins.)

The Referee: You are asking him to tell you whether or not he entered into an agreement which says so-and-so. Perhaps you can ask him whether or not he has entered into any agreement, but you cannot ask him to testify whether or not he entered into a specific type of agreement.

Q. (By Mrs. Carver): Mr. Collins, have you [177] entered into any agreement with Mrs. Collins pertaining to this property?

A. I did not.

Mr. Tobin: Objected to, altering the terms of a written instrument by parol testimony; incompetent, irrelevant and immaterial; and not binding on the bankrupt's creditors.

The Referee: Objection overruled. Let the answer stand.

Q. (By Mrs. Carver): Did you ever intend to give Mrs. Collins this property as a gift?

A. I did not.

Mr. Tobin: The same objection; also, on the ground it calls for a self-serving declaration.

The Referee: Objection overruled. The answer may stand.

Mrs. Carver: Your Honor, I don't know whether the Court will pass on the ownership of the property.

The Referee: Yes, I will be glad to rule on the question of property as soon as all the evidence is in, because I rather think if you succeed in proving the property to be community property we have a very good chance of establishing solvency.

(Testimony of John Collins.)

Q. (By Mrs. Carver): Mr. Collins, there is a balance owing on the purchase price of the property, is there? [178]

A. There is.

Q. How much is owing, or was owing on it at the time the property was purchased?

A. I couldn't tell you exactly—at the time it was purchased?

Q. Yes. A. About $7,900.00.

Q. It was $8,100.00, was it not?

A. I think it was seventy-nine hundred. I paid $100.00 down and then the $5,000.00. Then I paid $188.00.

The Referee: The material question is what was unpaid at the time of filing of the petition in bankruptcy?

Mrs. Carver: About $6,000.00, I understand.

The Referee: How much was unpaid August 22, 1955?

A. (By The Witness): I would say about $6,800.00 for a guess.

The Referee: All right; proceed.

Q. (By Mrs. Carver): Mr. Collins, you made the payments on the encumbrance on this property from the time it was originally purchased, did you?

A. Myself and my wife did.

The Referee: I think Mr. Tobin will stipulate the payments were made from community property, is that correct? [179]

Mr. Tobin: I assume so, yes.

The Referee: All right.

(Testimony of John Collins.)

Mrs. Carver: Mr. Tobin, I wonder if you will stipulate that the down payment——

Mr. Tobin: No. It was in the State of New York and there was no community property law in New York.

The Referee: All right; proceed.

Mrs. Carver: That is all I have, at present.

Examination

Q. (By Mr. Tobin): In the early part of your direct examination, Mr. Collins, you said something about telling them there at the bank that the property belonged to you, your wife and three children.

A. I would say so. Some of it is for the benefit of all five of us.

Q. Did you tell them it belonged to you and your wife and three children?

A. I just told them it belonged to my wife and I. I don't think I said about the children.

Q. Why did you mention the three children in your direct examination?

A. They have just as much right to that as they have to anything else I own, I suppose—what I meant was that they use it.

Q. You testified on direct examination this [180] property belonged to yourself, your wife and three children, did you not?

A. I believe that was the case; however, I don't recall exactly.

Q. What share, then, do you claim to own in that property that belongs to yourself, your wife and three children, in your opinion?

(Testimony of John Collins.)

A. It would be my opinion, if it was community property, the husband is manager of it, and that he has the privilege of doing what he wants to do with it—the father of a family, doesn't he?

Mr. Tobin: I am not arguing law with you. I am asking what, in your opinion, was the share of that property that you testified belongs to you, your wife and three children.

A. I would say it is all mine.

Mr. Tobin: That is all.

The Referee: Any other questions?

Examination

Q. (By Mrs. Carver): Mr. Collins, did you ever execute a quitclaim deed or any instrument conveying any interest in this property to Mrs. Collins?

A. When they asked me if it was going to be her own separate property, they told me if it was going to be that I would have to execute a quitclaim deed, or [181] else have it put on a grant deed. The one we had stated "Ada Collins, a married woman," and hers alone, separate property. I did not want it put down as hers or hers alone separate property.

Q. Did you answer the question I asked?

A. Did I sign a quitclaim deed?

Q. Yes. A. I did not.

Mrs. Carver: That is all.

Examination

Q. (By Mr. Tobin): Why did you put it in her name?

(Testimony of John Collins.)

A. Because I was not available at the time the escrow was closed.

Q. At the time the escrow was opened you intended to put it in her name?

A. Originally opened?

Q. Yes.

A. I don't believe so. That came up because I was not going to be there, I had to get the money.

Q. When did you decide to put it in your wife's name?

A. Well, I don't think I decided that question. I think it was decided between my wife and Mrs. Bailey, if I recall it.

Q. Then, you had nothing to do with the decision [182] to put it in your wife's name?

A. I wouldn't say I didn't have anything to do with it. When they talked to me about her taking care of the papers, I think the discussion came up at that time that if it was going to be her separate property, as I say, that is when it was first opened up that they would have to quitclaim it, because that was the policy of the bank, and also for the title company.

Q. You were putting up the $5,000.00 out of your savings?

A. It belonged to my wife and I. The $5,000.00 came out of a joint account belonging to my wife and me.

Q. It was your earnings?

A. All my life, yes.

Q. What part of it did your wife earn?

(Testimony of John Collins.)

A. Well, just because my wife is at home, taking care of the kids, I think she earns as much as I do.

Q. I am talking about the income that went into that $5,000.00 that was back in New York, how much of that income did your wife earn?

The Referee: Did she work?

A. She did not work, no.

The Referee: That is all on that. Is there anything else?

Q. (By Mr. Tobin): Have you any reason now that [183] you can give the Court why you had that property put in your wife's name?

A. For the sake of convenience. She was there and she could go ahead and get the escrow started and complete it so that we could move in before Christmas, 1951.

Q. Convenience in what respect?

A. To make the necessary arrangements so that we could move in.

Q. Why did you go back to New York? Did you fly? A. I believe I did.

Q. About how long were you gone?

A. About two or three days.

Q. When was the deed made out with reference to your arrival back in Los Angeles?

A. I could not tell the exact date. It should be on the deed.

Q. When did you get back to Los Angeles?

A. I could not tell you. As a matter of fact,

(Testimony of John Collins.)

I could not tell you what date the house was bought, but I know it was right around Christmas.

Q. Acknowledgment was on December 7, 1951.

A. December 7th or 17?

Q. The 7th. It was recorded December 18, 1951.

When with reference to December 7, 1951, did you get back to Los Angeles? [184]

A. I really couldn't tell you.

Q. Was it before?

A. I doubt if it was before. I remember it was close to Christmas.

Q. You cannot tell us that—how long before this deed was made out to your wife that you got back to Los Angeles with the $5,000.00 of your savings that went into it?

A. I imagine it was made out while it was over there, I don't know.

Q. Then you had nothing to do with putting the property in your wife's name? You were in New York?

A. I could not say, to be perfectly honest.

Q. Were you in New York when this deed was made out, December 7th, in favor of Ada J. Collins?

A. To be honest with you, I can't tell you.

Q. You can't tell us?

A. Well, that is four years ago. I do know it was before Christmas, and I thought the date was later than that.

Q. You cannot tell us what convenience was to be served in putting it in her name, can you?

A. Yes, it was the idea she could take care of

(Testimony of John Collins.)

all the paper work. There were various things necessary for us to have to live, such as a stove, and various things like that, that we had to buy, which we took care of. [185]

Q. What difference would that make, whether the title was in her name or your name or whether there was a stove in the house?

A. While I was doing one thing she was doing another.

Q. What were you doing and what was she doing? I want to get as much detail as I can.

A. I would like to give you more detail, or whatever is necessary to bring forth this matter, but I really can't tell you.

Q. But you cannot do it?

A. Not the exact date, I don't believe I could.

Q. You cannot tell us what convenience was to be served? A. Yes, I told you.

Q. What paper work was she doing?

A. The whole file that the Bank of America has, and there was one paper put into evidence, and I believe there was fifteen or twenty more up there.

Q. That was dated, I believe, December 17th.

The Referee: The escrow is dated December 7th.

Mr. Tobin: That is the same day as the deed, December 7, 1951. The deed was recorded December 18, 1951.

Q. What paper work did your wife do that would suit your mutual convenience to have the title taken in her name? [186]

A. She must have had to sign these escrow

(Testimony of John Collins.)

papers, or whatever was necessary to make the transaction.

Q. Were you there when the escrow papers were signed, the trustee's exhibit, is it?

The Referee: Petitioning Creditors' Exhibit No. 8.

A. May I look at it?

Q. (By Mr. Tobin): Were you there when those escrow instructions were signed?

A. It is just on this one sheet. This here says December 7th.

Q. Were you there when that was signed?

A. I don't believe I was.

Q. Where were you?

A. I really couldn't say.

Q. In New York?

A. I imagine I was. I really couldn't tell you.

Q. Then, you had nothing to do with the taking of that title in your wife's name, did you? The escrow statement was signed the 7th of December. The deed was made out and signed and acknowledged the 7th of December. You think you were in New York at that time?

A. Well, if you might allow me to look I think maybe I could pinpoint the date I went.

The Referee: We will take a recess.

(Whereupon, a short recess was taken, after which [187] the following proceedings occurred.)

Q. (By Mr. Tobin): Mr. Collins, when did you come out here from Niagara Falls?

(Testimony of John Collins.)

A. I would say it was approximately in October, 1951.

Q. Did you owe any creditors back there at that time?

Mrs. Carver: I don't see that that has any bearing on this matter.

Mr. Tobin: On the question of the reason and convenience, and so forth.

The Referee: Objection overruled.

A. I had $20,000.00 in the bank; I didn't owe nobody.

Q. Were you having any trouble with the United States Government on income tax at that time?

A. No, sir.

Q. Had you had any trouble with the United States Government on income tax? A. No.

Q. Never? A. No, we never disagreed.

Q. You had no claim made against you by the government on a shortage of income tax or anything like that? A. No, sir. [188]

Q. Well, now, during the recess, have you found out what the convenience was that would be suggested by your taking this property in your wife's name?

A. The convenience was that my wife could complete the transaction while I was not available.

The Referee: That has been said several times. You were going to try to find something as to when you went to New York.

A. (By The Witness): Well, it was after I put this deposit on the house of $100.00.

(Testimony of John Collins.)

Q. (By The Referee): When did you go to New York?

A. If the Court please, I would like to say it was between the 6th of December and the 12th of December. That is about as close as I can get to it.

The Referee: All right, proceed.

Q. (By Mr. Tobin): Did you owe any money back in the east, east of the Mississippi River, to relatives or anybody else? A. No.

Q. Did you in 1951?

A. No. I think I owed a lawyer $33.00, but he got it paid.

Mr. Tobin: That is all.

The Referee: Any other questions?

Mrs. Carver: No, your Honor.

The Referee: Step down.

(Witness excused.) [189]

The Referee: Any other questions?

Mrs. Carver: No further questions pertaining to the home, please.

The Referee: Is all the evidence in? Is there any question on either side?

Mr. Tobin: That is all.

The Referee: All right.

(Discussion.)

The Referee: Is there anything further?

Mrs. Carver: Except to state, your Honor, that it may be that we will want to bring Mrs. Collins in.

The Referee: We might assume that Mrs. Collins would corroborate the testimony of Mr. Collins, the reasons given by Mr. Collins for taking title in the

name of his wife, of course, is not very compelling for the reason that the record very clearly shows that the escrow was entered into on December 7th; and that the escrow instructions were, in the first instance, signed by Mrs. Collins; that the escrow instructions provide for the payment of $100.00 in the escrow; and that when papers were ready to file there would be handed to the escrow the further sum of $5,054.56; and, so, I think that what happened at the escrow was that there was this discussion of moving in before the escrow was completed; and in order to accomplish that Mr. Collins went to New York and got the $5,000.00; but the signing of the [190] papers was done at that time, and everything was done that would have to be done by Mrs. Collins. Is there anything further?

(No response.)

The Referee: The Court concludes that the evidence here presented is not sufficient to overcome the presumption of separate property. You may proceed.

JOHN COLLINS

resumed the stand and testified further as follows:

Q. (By Mrs. Carver): When did you first become connected with Mr. Lefringhouse?

A. About 1952, late in 1952.

Q. At that time did you have negotiations with him about going into the business? A. I did.

Q. Would you state to the Court what was agreed between you and Mr. Lefringhouse at that time?

Mr. Tobin: Was that in writing?

(Testimony of John Collins.)

Q. (By Mrs. Carver): Did you have any agreement in writing with Mr. Lefringhouse?

A. No, I wouldn't say we did, especially, other than the money I gave him, and checks and stuff like that.

Q. What was the arrangement when you first became associated with him? [191]

A. Mr. Lefringhouse had just started recently, had started a liquor store in 1952; and he was telling me how he wanted to take the liquor store and operate it successfully, and he at the time had too many payments on it, of $600.00 a month, when he first opened; and he needed some money to keep that going, and so forth. And he said he would also like to start a cocktail bar where the beer bar was. And he wanted to know if he could borrow some money. After various times talking back and forth, why, he said—we got talking about security and so forth; and he wanted money right away so that he could use it in the liquor store; and, also, to go ahead and make preparations in the event we were successful in obtaining a liquor license. At that time I made the agreement with Mr. Lefringhouse—there were some old fixtures at the beer bar there—that if I gave Mr. Lefringhouse $3,500.00—which I did—that that would pay for what remaining fixtures could be of use. There were a lot of fixtures that were no good and had to be thrown away; and started remodeling, which we started in 1953.

(Testimony of John Collins.)

Now, we got talking about it and I said, "How are we going to handle it?"

He said, "I can't give you any title to the fixtures because there is a chattel mortgage." This was a few days after he got the $3,500.00 to use [192] in the liquor store. I said, "Why don't you get the chattel mortgage off it?" He said, "It is not paid out." And, so, one thing led to another, but he said, later on, he would get the chattel mortgage released.

The Referee: Don't go too fast. Let us see if we can follow you. This began when?

A. The first happened around 1952, late in the year, December.

Q. When did you give him the $3,500.00?

A. I believe it was pretty near, I am sure, December or January.

Q. December, 1952? A. 1952, yes.

Q. Is there any way you can prove it?

A. A check.

Q. Have you got the check?

A. I think there are some checks there.

Mrs. Carver: I have the check.

Mr. Tobin: May I see the rest of them?

Mrs. Carver: I have a portion of the checks.

Examination

Q. (By Mrs. Carver): Mr. Collins, I will show you check 28, December 24, 1952, payable to Stanley Lefringhouse, in the sum of $1,000.00, signed by Ada J. Collins. Was this check delivered to Mr. Lefringhouse? A. Yes, it was. [193]

(Testimony of John Collins.)

Q. Is that one of the checks you have referred to? A. That's right.

Mrs. Carver: May I hand this to the Court?

Mr. Tobin: Objected to, incompetent, irrelevant and immaterial. It appears to be the check of Ada J. Collins and not the bankrupt.

The Referee: Mr. Tobin, I imagine there are a lot of married women who sign their husbands' checks. Objection overruled. It will be Bankrupt's Exhibit No. 6.

Q. (By Mrs. Carver): On or about December, 1953, did you give to Mr. Lefringhouse any other money, by check or cash?

A. Another check for $2,500.00.

Q. Do you have that check?

A. Well, in December, 1952, I had withdrawn from another account $3,500.00, and put it in the bank, I believe, and on depositing these funds it made a gross amount in the bank of about $3,800.00. At the cashing of this $1,000.00 check, Mr. Lefringhouse went down to cash it, and the man at the bank said the $3500 check from New York had not cleared and he did not like the idea of cashing this one for $1,000.00; but after I talked with him he said, "I will simply take a chance and cash it."

A few days later I gave him a check for $2,500.00. Mr. Lefringhouse then went to the bank and asked [194] him to cash it, and the man said that the $3,500.00 check had not cleared at that bank.

Q. (By The Referee): Was the $2,500.00 check cashed by Mr. Lefringhouse?

(Testimony of John Collins.)

A. I don't believe so.

Q. As a matter of fact, you know it was not, don't you, is that correct?

A. I really don't know. I have a deduction on my account for $2,500.00, and either cashed that check, or I withdrew $2,500.00 out of the account, because on the bank statement there was a withdrawal of $2,500.00, which I gave Stan Lefringhouse.

Q. Would you say you gave it to him in the form of a check or in cash?

A. I am quite positive I gave it to him in cash. The $2,500.00, I gave him a check first, and they would not take the check.

Q. When did you give him the check?

A. About three days after that one. If that is the 24th, I would say about the 27th of December.

Q. When did you give him the cash for $2,500.00, if you did?

A. I would say the 31st of December, or maybe the 1st of January, as soon as the $3,500.00 check was cleared in New York as being okay with the Bank of America.

Q. What business did Mr. Lefringhouse operate [195] in these premises at that time?

A. A beer bar.

Q. Did he have a liquor store?

A. In the front part of the building, yes, it was separate.

Q. You are referring to December, 1954?

A. That is true.

(Testimony of John Collins.)

Q. He had the liquor store all the way through?

A. That is true.

Q. And did you ever acquire any interest in the liquor store? A. No.

Q. He was operating a beer bar, is that right?

A. Yes.

Q. What was your agreement with Mr. Lefringhouse?

A. That I was going to supply the money for the remodeling, and all that stuff; and at a future date that Lefringhouse wanted to buy the place back from me. I was willing to let him have it back, or the money I put in, altogether, because I put more money in after that.

Q. Your agreement was that Lefringhouse was selling the beer bar to you, is that right?

A. That is right.

Q. For what price? [196]

A. Well, we went over the fixtures, and I couldn't tell you the exact price, and what fixtures were to be taken out of the bar, I don't remember how much it was, but that $3,500.00 was to cover the present fixtures that were in there, and for the remodeling of the bar.

Q. At that time Lefringhouse was operating the beer bar, is that right? A. Yes.

Q. Did the operation at any time stop?

A. The operation stopped, I believe, along about May, 1953.

Q. Between December, 1952, and the time when

(Testimony of John Collins.)

you put your liquor license in, which Lefringhouse, I think said was in June, 1953?

A. It reopened again in May or June, yes.

Q. What do you mean? Had it ever been closed? A. Yes, it was closed for remodeling.

Q. During what period was it closed for remodeling?

A. I would say for about eight weeks, in April and May.

Q. Between December, 1952, when you gave the $3,500.00, and April, 1953, who owned the beer bar?

A. Stan Lefringhouse continued to operate it as a beer bar until we seen it was permissive to get a license in the place. [197]

Q. You had no interest in the beer bar in that period of time, from the time you gave the $3,500.00 until you closed it, or it was closed for remodeling?

A. As soon as we got the liquor license and were sure it was going to go all right, then we arranged we would close down pretty quick, and as soon as we got the stuff arranged and the remodeling done.

Q. Then do I understand that the original agreement contemplated the securing of the liquor license? A. That's right.

Q. And you really were not going to be in the place until you had revamped it into a cocktail bar, is that right? A. That is true.

Q. Did you put in any more money than the $3,500.00? A. Yes.

Q. What did you put in?

(Testimony of John Collins.)

A. I don't remember, but there are checks.

(Mrs. Carver hands checks to Mr. Tobin.)

Mr. Tobin: How many checks of April 13th do you have?

Mrs. Carver: That is all.

Mr. Tobin: One is for $264.00 and one is for $250.00.

Q. (By Mrs. Carver): Mr. Collins, I will show you [198] a check——

The Referee: I think it is stipulated that the checks were delivered, is it not?

Mr. Tobin: Yes, your Honor.

The Referee: All right, the check of April 13, 1953, for $250.00 and the check of April 13th, for $264.00, each payable to Stanley Lefringhouse, will be Bankrupt's Exhibit No. 7.

Did you put in any more money?

A. Yes. The date, if your Honor please, on the two checks, it was April 13th, both of them.

The Referee: That is right.

A. A day or two previous to that Mr. Lefringhouse and I were going—I had given him cash money for about $100.00-odd — now, the night I went down, that very day, April 13th, I went down to the bar and saw a fellow working there, and I says, "What is the matter?" He says, "We are not going at all." I says, "What is the trouble?" He says, "Run out of funds."

Mr. Lefringhouse came in a few minutes later, and we talked the situation over, and he said he needed money to go ahead—what we had figured, it was going to run more money; and that night,

(Testimony of John Collins.)

in the liquor store, I gave him as much cash as I had in my pocket, and he had owed me $20.00—we were out together a day or two before that—and altogether, with those checks, [199] totaling $1,000.00.

Q. What was the purpose of giving him the check for $264.00, do you know?

A. Well, it was to make up the full amount, and he wanted to use the money immediately.

Q. To make up what full amount?

A. Of $1,000.00, to make a total of $1,000.00.

Q. April 13, 1952, is the day you gave these checks, was the place closed? A. Yes.

Q. The remodeling was underway, is that correct? A. Yes.

Q. Your testimony now is that these two checks and cash given at or about the same time totaled $1,000.00? A. And cash at the same time, yes.

Q. On the back of the $264.00 check are some figures, reading $264.00, $40.00, $304.00. Does that refresh your recollection about any part of the transaction?

A. Well, it seems to me that the $40.00, apparently, was the night that Stan and I were at the Turf Club for a time and I gave him money.

Q. Did you give him further money? You have testified about $3,500.00 and $1,000.00. Did you give him any other money?

A. Directly to him, for the business I did, [200] yes.

Q. What did you give him?

(Testimony of John Collins.)

A. There was various checks for the State Board of Equalization, for taxes and things of that nature.

Q. Let us get down to the liquor license. Was that a new license you secured the 1st of June, let us say, 1953, had you a license up to that time?

A. No.

Q. That was the first time a license was issued to you? A. That's right.

Q. Did that cost you any money?

A. $325.00.

Q. Now, have you any evidence as to any other moneys which you paid to Mr. Lefringhouse or which happened in connection with this business—any evidence and not merely your recollection?

A. Checks?

Q. Yes.

A. Check to the State Board of Equalization. I believe Mr. Lefringhouse has those.

Mrs. Carver: Here is another check. I will show it to Mr. Tobin.

A. I did give more checks.

Mrs. Carver: I do not have any more. You might look through your papers. [201]

The Referee: You have no other checks?

A. (By The Witness): I have them, but I don't have any here, that I can recall right offhand. Here is one for $17.15, to the State Board of Equalization. This here check that I lost came out of the checkbook, down at the place—it was the Norwalk Branch, and they crossed it out and put in the Whittier Branch.

(Testimony of John Collins.)

Q. Do you know what this was for?

A. I believe it was to pay some taxes. I don't recall exactly what it was for, no; it was something to do with the place.

Q. On the beer bar, is that it? A. Yes.

The Referee: Do you want to offer this?

Mrs. Carver: Yes, your Honor. I might show it to Mr. Tobin.

A. (By The Witness): Here is another, $151.00 to the State Board of Equalization.

Mrs. Carver: I will offer these.

The Referee: These two checks, one dated December 30, 1952, $151.00, and the other one dated April 30, 1953, $17.15, will be Bankrupt's No. 8.

You were in the Schooner, were you not, or whatever it was called? A. At that time?

Q. Yes, December 30, 1952. [202]

A. I also owned the Schooner.

Q. How do you know that this check of December 30, 1952, has any relationship to the property in which Mr. Lefringhouse was interested? How can you identify it?

A. Well, for one thing, this check for $151.00, that is a deposit for the sales tax.

Q. A deposit for sales tax?

A. Yes, you have to put up a deposit.

Q. How do you identify it as being a deposit for sales tax?

A. I could get someone from the State Board to say I paid it on that date.

(Testimony of John Collins.)

Q. All right. Now, have you any evidence as to any further money paid?

A. I can't think of any. I didn't think we were going into that and I didn't go through the stuff I have.

Q. What did you say your agreement was with Mr. Lefringhouse as to what you were getting for your money?

A. Well, the arrangement was that Lefringhouse was going to manage the bar, the cocktail, when it was set and ready to go.

Q. Were you to acquire any property with your money? [203]

A. I was supposed to supply the fixtures, the whiskey; and Stan was supposed to supply the efforts and the managing part of it, to put this stuff together. What he was getting back, he was going to buy the bar back for the amount of money—I was really doing him a favor, to help him get started.

Q. And you were supposed to have the right to get the money you had put in for the fixtures?

A. Any materials I put in.

Q. At your cost?

A. All at my cost. He didn't have any money to buy things. With the operation that was going, he was to operate it. I was to get the first $250.00 a month out of the profits.

Q. You are going too fast. Well, was there anything said as to who owned the fixtures until such

(Testimony of John Collins.)

time as Mr. Lefringhouse would give you your money back?

A. Nothing other than that the man took the money.

Q. No; you always want to explain everything. The question is, was there anything said as to who owned the fixtures after you gave him your money? You did not make out any papers?

A. No, we did not make out any bill of sale.

Q. When you got down to it, when it was remodeled and opened up again, you had your liquor [204] license. What was Lefringhouse to get out of the operation?

A. Everything over the first $250.00 a month of profits.

Q. What was said about the rent?

A. It was to come out of the cost of operation of the bar, which is in those books.

Q. You did have some understanding with him about the rent, didn't you? A. We did.

Q. And you had agreed with him that you would pay, or someone would pay, $225.00 a month, is that right?

A. That was the original—that was the agreement earlier. Then we changed that one, when I went ahead and put the additional money in.

Q. Let us get back to the $225.00 deal. When was that made?

A. When you go down to the Board you simply state you have a lease in order to make an application for the license.

(Testimony of John Collins.)

Q. That is when you started to get the liquor license? A. Yes.

Q. How long did it take you to get the liquor license?

A. Three months, I would say three or four months. [205]

Q. They said you had to have a lease?

A. That's right.

Q. Did you get a lease?

A. Well, I told him that if I would lease the building just the way it was—$225.00 a month.

Q. What building? A. The bar section.

Q. Did you get the lease from Lefringhouse?

A. Yes.

Q. In writing? A. Yes, I did.

Q. Where is it?

A. I turned it in to the State Board of Equalization.

Q. You didn't keep a copy?

A. It was only a little longhand writing.

Q. And you and Lefringhouse signed it?

A. That is true.

Q. $225.00 a month you were going to pay to Lefringhouse, is that right?

A. That is correct.

Q. You turned that in before you got the license?

A. Then he was going to supply the fixtures at the $225.00 rate.

Q. Well, now, was the $225.00 deal arranged before you gave him the $3,500.00? [206]

(Testimony of John Collins.)

A. No.

Q. I thought you were going to pay for the fixtures by giving him the $3,500.00.

A. That was at that time. Then we talked about that I just go ahead and buy the fixtures and put them in, and then, "We will charge $225.00 a month for the place," a higher rent, and he would supply the fixtures. He could not because he did not have the money to do it and he owed me.

Q. What did he say about the money you put up, the $3,500.00?

A. I wondered that myself.

Q. What did he say?

A. He said, "I have not got it now but you will get it."

Q. When did you turn in this lease to the State Board?

A. The day I applied for a liquor license.

Q. No, you are getting mixed up. You said you applied for the liquor license and then you said they would not give it to you unless you had a lease?

A. They did within a day or two of January 6th.

Q. How long before you got the license did you turn the lease in?

A. Well, at the time of the application I turned the lease in, before I even got the license. [207]

Q. How long before you got the license did you turn the lease in?

A. I would say two or three months.

(Testimony of John Collins.)

Q. Now, did you pay Lefringhouse any money on the lease?

A. No, it was not to be effective until the bar was set up.

Q. You didn't pay him any money?

A. No.

Q. You have been in court, have you not?

A. Yes.

Q. Did you hear him testify that you gave him $450.00? A. I know what he said.

Q. But you say he did not?

A. Not that I know of. I didn't know about it. He said he did not receive any money promptly.

Q. What was he to get for operating the business? You said everything over $250.00 a month.

A. He was supposed to get.

Q. I take it you never got the $250.00 a month?

A. The idea was that I was supposed to supply the fixtures.

Q. Just answer the question. Did you ever get your $250.00 a month or any other sum from the operation? [208] A. No.

Q. Did you ever ask him for it?

A. I did. He said, "Now, you are supposed to supply the fixtures, and we have got to pay this and that"—and they are all listed in the books.

Q. In other words, the $250.00 was supposed to go into the fixtures?

A. Sure, to be paying off the fixtures.

Q. Those fixtures were mortgaged, were they not?

A. The original fixtures were chattel mortgaged.

(Testimony of John Collins.)

Q. How did he get rid of the mortgage, if he did?

A. He didn't do it until I did it. I got the release of the chattel mortgage some place here. I think it is right here.

Q. Show it to Mrs. Carver.

A. What date is that?

Mrs. Carver: July, 1954.

A. That is when it was finally released.

The Referee: Are you offering it in evidence?

Mrs. Carver: Yes, your Honor.

The Referee: This will be Bankrupt's Exhibit No. 9. This is dated July 27, 1954.

How much money did you pay in connection with this release? [209] A. Did I pay?

Q. Yes.

A. He was the one that borrowed the money.

Q. Just don't discuss matters with me. If you paid anything, say so, or if not, say "nothing."

A. Nothing.

Q. Who gave you this paper?

A. A man by the name of Emmett Rogers, he and his attorney.

Q. Was Mr. Lefringhouse with you?

A. I don't think so, but he may have been. He had called Mr. Rogers on the phone.

Q. You paid no money, however, to get this?

A. No.

Q. Now, Mr. Lefringhouse made out a note to your brother and you signed it, is that right?

A. That is true.

(Testimony of John Collins.)

Q. And he, of course, did. Do you know the date?

A. It is July 6, 1954, I think. I think Miss Hofstetter has a copy.

The Referee: Is there anything available on it?

Mrs. Carver: I have it right here. I will offer it.

The Referee: Bankrupt's Exhibit No. 10.

This is a note dated July 6, 1954, payable to [210] Lawrence Collins, for $4,100.00, payable in certain installments. Did Mr. Lefringhouse owe your brother any money at this time?

A. He owed him for some fixtures, or something else, I believe, that he had in the liquor store —a refrigerator was one, a cash register.

The Referee: We will have to identify that. Was that something he got from your brother before you got in the deal with him or after?

A. I believe it was before we opened the cocktail bar, but I am not positive.

Q. Did it amount to as much as $4,100.00?

A. It amounted to, I think, $600.00 — they agreed on.

Q. What did Mr. Lefringhouse get for the remaining $3,500.00?

A. Well, at the time, now, 1954, Mr. Lichtenfeld, the man that was here a few days ago, he was going to buy the place. At the time he was going to buy the place that chattel mortgage was in existence that I pointed out to you—that went into the Vista Escrow, at Long Beach, an escrow was opened.

(Testimony of John Collins.)

Q. We understand there was a $3,000.00 escrow.

A. Yes.

Q. I am asking you what Lefringhouse got for this $3,500.00. Just tell me that. [211]

A. He was to get one-half of the bar, starting as of May 11, 1954.

Q. This was for a half-interest in the bar, is that right? A. That's right.

Q. Including the license?

A. Including everything, everything that was there at the bar, excepting that he was to account for the $1,800.00 of that whiskey that Harry paid him.

Q. Who is Harry? A. Harry Lichtenfeld.

Q. This is a little inconsistent, isn't it? I thought you testified you owned the bar fixtures at this time. A. That's right.

Q. But apparently you sold a half-interest to Lefringhouse? A. On May 11, 1954.

Q. How can you own them if you sold a half-interest to Lefringhouse?

A. Well, Lefringhouse claims that this thing never went through, this corporation thing. That was always the understanding—if we were not a corporation we must have been partners. He got the money and everything out in the place.

Q. Your brother is now suing Lefringhouse on [212] this note? A. Yes.

Q. And I assume suing you also?

A. That is true.

The Referee: All right. I will take an adjourn-

ment at this time and we will resume tomorrow morning at ten o'clock.

(Whereupon, an adjournment was taken until Tuesday, December 6, 1955, at 10:00 o'clock a.m.) [213]

Tuesday, December 6, 1955, 10:00 O'Clock A.M.

JOHN COLLINS

resumed the stand and testified further as follows:

Examination

Q. (By Mrs. Carver): I will show you a list of fixtures in the place of business of Stan's Stagecoach Bar. Can you tell us which fixtures were purchased after you became associated with Mr. Lefringhouse? A. Afterwards?

Q. Yes.

A. Well, the stoves were refinished.

Mr. Tobin: Objected to. He was asked what ones he had purchased.

The Referee: Objection overruled.

A. They were re-done over; the booths—it says two boxes here—I believe that means the beer box—I believe there was one there at the time. The storeroom was put on. The jockey box was put in. The rest rooms were remodeled at the time. Partitions were put up at the time. This here, papering and painting, was done at the time. The dance floor was put in at the time. The lighting, the piano bar, the asphalt tile—I would like to say it was all [214] done after I went into the bar with Lefringhouse.

(Testimony of John Collins.)

Q. Are these the items that were to be paid for and Mr. Lefringhouse notified you were paid for by the application of $250.00 a month?

A. That is true, some of them.

Q. You testified yesterday as to payment made to Mr. Lefringhouse when you first became associated with him. I don't think it was clear just what you were to get for that payment. Will you state what your understanding was?

The Referee: I think he has testified that he was to put in the money and Lefringhouse was to put in his effort; that he was to get the first $250.00 from the income, and Lefringhouse the balance. And I think he testified, in substance, they were to be equal partners in the physical assets. Is that right?

A. No; we would become as of May 11, 1954, that is, after the bar was re-taken from Lichtenfeld.

Q. Get away from that, at the outset, before you sold to Lichtenfeld.

A. We were not to be partners.

Q. What interest were you to have in the physical assets, including the license?

A. Own them.

Q. And he was to have the right to buy back?

A. Yes. [215]

Q. After you got it back from Lichtenfeld then was it the understanding that from that time you were equal partners?

A. That was our verbal arrangement.

(Testimony of John Collins.)

Q. What about the arrangement as to the payment to you of the first $250.00? Was that still in effect? A. At May 11th?

Q. Yes.

A. No, I was no longer to receive $250.00.

Q. You were to share the profits equally?

A. Yes.

Q. What about the rent?

A. That was an expense to come out of the bar.

Q. At what rate?

A. At that particular time it was $75.00.

Q. You agreed upon $75.00?

A. That was one-half of the total of the entire building. I perhaps got mixed up yesterday on the $4,100.00 note that we talked about. If I could have the escrow papers from the Vista, a moment. The bar was sold for $16,000.00 to Lichtenfeld. Of that $16,000.00 the real estate man was to get $1,600.00, which left a balance of $14,400.00. At that time there was an indebtedness of the bar to the extent of $7,500.00. The balance between the $7,500.00 and the $14,400.00, which would be about $6,900.00, I was to get. I will show you in the escrow where [216] I was to get of that balance at the time an equity of $5,500.00, according to the moneys put in, and so forth. Lefringhouse had an equity of approximately fourteen in it, which he claimed he should get out of it. All I was interested in was to get my own money out.

Mrs. Carver: I believe the escrow papers are in evidence.

(Testimony of John Collins.)

The Referee: They are not in evidence. I do not find them.

Mr. Tobin: What was Petitioning Creditors' No. 6?

The Referee: Petitioning Creditors' No. 6 is a demand by Lefringhouse and Collins on Juanita F. Lichtenfeld and/or Juli, Inc., a California corporation, that they pay certain moneys.

Mr. Tobin: I have a copy of the escrow here.

Mrs. Carver: Is the one you have the same as this one?

Mr. Tobin: It is the same one, yes.

Mrs. Carver: I want to offer this as the Alleged Bankrupt's next in order.

The Referee: Bankrupt's Exhibit No. 11. Proceed.

A. On that sheet I refer to an agreement, that I was to receive $5,500.00 from the escrow—on the top there, I believe; and on the top of that, with Lefringhouse having a $1,400.00 equity, and I having a $5,500.00 equity—it was agreed upon between [217] the two of us.

Mr. Tobin: Now we will certainly object to an alteration.

The Referee: Objection sustained. Proceed with the questioning, Mrs. Carver.

Mrs. Carver: May I have the escrow instructions?

The Referee: There is no use asking what is in the escrow instructions.

Q. (By Mrs. Carver): Did Mr. Lefringhouse

(Testimony of John Collins.)

ever account to you for any profits or losses during the operation of this business?

A. I wouldn't say he never did, but when it came down to such things as this $1,800.00 of Lichtenfeld, wherein he paid for the whiskey and bar, Lefringhouse was supposed to account for that $1,800.00, which he has never done; and that $1,800.00 worth of whiskey that the petitioning creditors on this bankruptcy have put into here—that same whiskey.

Mr. Tobin: I move to strike, not responsive.

The Referee: The last part, relating to the petitioning creditors, will go out.

Q. (By Mrs. Carver): Was there anything ever paid to you from the operation of the cocktail bar?

Mr. Tobin: Objected to, immaterial.

The Referee: Objection overruled.

A. No. Any profits, you mean, or anything like that? [218]

Q. Anything. A. No.

Q. Coming down to August, 1954, did you and Mr. Lefringhouse enter into any other agreement in reference to the fixtures in the place of business?

A. Well, on this $4,100.00 note, we were going to put a chattel mortgage on the fixtures in the bar; and the reason it was held up until August was because of the release of the other chattel mortgage of Rogers, in the file.

Q. What was the arrangement as to any interest in the business between you and Mr. Lefringhouse?

Mr. Tobin: That would be objectionable.

(Testimony of John Collins.)

The Referee: That has been testified. Proceed to something else.

Mrs. Carver: Your Honor, at this time I have figured the various cash surrender values of the insurance policies.

The Referee: Have you made a statement of that?

Mrs. Carver: Yes.

The Referee: Let us not take the time to go over that now. If there is no objection this will be marked Bankrupt's Exhibit No. 12, subject to inspection and check by counsel for the petitioning creditors.

Mrs. Carver: Likewise, the hospital benefit [219] insurance, showing there was hospital benefits to the extent of $1,800.00, which will be paid in the event the Industrial Accident claim is denied. I won't offer the policy itself.

The Referee: Very well.

Mrs. Carver: I will get it later on.

Q. (By Mrs. Carver): Mr. Collins, in reference to the accounts receivable of your former place of business, the list we have put in evidence, what was the agreement between you and your former partner as to the ownership of that particular list of accounts?

A. There was about four sheets of accounts receivable. At the time we went into escrow we flipped a coin, or took choices back and forth, of which account we would accept, which one we thought we

(Testimony of John Collins.)

could collect; and he took one-half and I took one-half.

Q. Mr. Collins, I will show you a list of the accounts receivable, which you just testified to. Now, these accounts total $1,361.25. In addition to this list of accounts what other accounts receivable do you have? A. The moneys owed to me?

Q. Yes.

A. Well, there was a judgment against a George Graham. That is not on here. It was about $60.00 or $70.00. There was an indebtedness from a Joseph Kaiser for $960.00. [220]

Q. What does the Joseph Kaiser cover?

A. It was a loan.

Q. When did you make the loan to him?

A. In June, I believe, 1954.

Q. What is the financial condition of Mr. Kaiser at this time?

Mr. Tobin: Objected to, calling for a conclusion of the witness.

The Referee: Objection sustained.

Q. (By Mrs. Carver): This indebtedness was for what, this $960.00?

A. Well, the arrangement was, he was to move out here, as I was foreman for the steam fitters—I told him if he would come out I would get him a job. He did not come out right away because he had a store to sell back there.

The Referee: Don't go into all those details. All we are interested in is the fact, whether Mr. Kaiser is indebted to you.

(Testimony of John Collins.)

Q. (By Mrs. Carver): Do you have any documentary evidence?

A. Nothing I can think of.

Q. Do you have a cancelled check?

A. I don't know whether he paid me by check or not. It seems to me I gave it to him in cash.

Q. What records of the loan do you have? [221]

A. Just that I know I paid for his car—that was what it was for.

Q. In other words, you advanced the money to buy him an automobile?

A. No, he had the automobile and he wanted to buy a house, and he was only making $80.00 a week and he could not afford to pay both. I loaned him the money to make payment on the car; and when he went to work he was going to repay me the money.

Q. (By the Referee): Did you have a conversation with him about $900.00? A. Yes.

Q. Was there anybody else present?

A. The day I gave it to him?

Q. Whenever you had a conversation?

A. I believe my wife was.

Q. Do you know where it was?

A. The first day we talked about it was over at my house. I said, "Joe," he was paying $125.00 rent——

Q. I am sorry. Will you be kind enough to relate the conversation?

A. This was what I told him: "why don't you get out of this here big obligation of $125.00 a

(Testimony of John Collins.)

month rent, buy yourself a house, where you can make lesser payments?" He said he couldn't because he had a car payment, and with the small amount of money he was making as a clerk in a [222] grocery store, he couldn't; and he said, "I would like to buy a house"; but this house he wanted to buy, he didn't have enough money if he paid for the car, he wouldn't have enough money to pay down on a house. I told him, "It won't be long until you will be going to work for me, if you want, I will loan you some money."

He said, "If I can pay off my car, that would leave those payments to go for the house." Then, when I got him a job, I figured he would get $150.00 a week and he could make both payments.

Q. We have taken a long time in this case and we have got to get down to the bar. What was said about you giving him $900.00, or making a gift of it to him, what he said?

A. He said he would pay back to me when he makes the money on the other job.

Q. Did you give him $900.00?

A. I gave him $960.00.

Q. Was it in check or cash?

A. I believe in cash.

Q. Where did you get the cash?

A. At home.

Q. You mean you had the money in your home?

A. Yes.

Q. You didn't draw it out of a bank?

A. I don't believe I did. [223]

(Testimony of John Collins.)

Q. Did you get any kind of receipt for it?

A. No.

Q. Did you pay the money to Mr. Kaiser or did you pay it to the person or firm that had the loan on his car? A. Mr. Kaiser.

Q. Do you know what he did with it?

A. He said he was going to pay off the mortgage on his car.

Q. Did he ever get any paper on the car?

A. He showed me where he owned the car.

Q. Did you get any paper on the car?

A. No.

Q. Were you named as legal owner on the car?

A. No.

Q. In place of the finance company?

A. No, I was not financing him.

Q. Has he ever paid you anything? A. No.

Q. Have you ever asked for anything?

A. The agreement was——

Q. Have you ever asked for anything?

A. No.

Q. Where is Mr. Kaiser now?

A. He is in either Covina or West Covina.

Q. Where does he work? [224]

A. He works at a market, a Basket Food Store.

Q. (By Mrs. Carver): In connection with the injury to your son, what bills have you actually paid? A. I paid the hospital bill.

Q. What was the amount of that?

A. I couldn't tell you right offhand.

The Referee: Haven't we gone over that?

(Testimony of John Collins.)

Q. (By Mrs. Carver): I will show you here certain records. One is called "Hugette"; in your opinion is this record a collector's item?

A. I really don't know, to be honest.

Q. I will show you also a record by Ernestine Schumann-Heinck. What, in your opinion, is the value of this record?

A. It could be—up to $50.00.

Q. Is it your opinion the record has a value of $50.00?

A. I believe it could possibly have, yes.

Q. I will show you an album of thirteen records, called the Catholic Church Record Club. What, in your opinion, is the value of this particular album of records?

A. I would not take $100.00 for it. I believe that it would now be worth more than that.

Q. Can you give a value?

A. Well, I would set it at $100.00.

Mrs. Carver: I think we are down to the claim [225] of the Industrial Accident.

The Referee: We will hold that. That is set for hearing tomorrow, is that right?

A. (By the Witness): It is supposed to be.

The Referee: We will hold that. Go ahead.

Mrs. Carver: At this time I am not mindful of anything. I was going to ask leave that if there are any other assets that we be given an opportunity to prove them and prove their value.

The Referee: All right. You may rest without prejudice. Do you rest?

(Testimony of John Collins.)

Mrs. Carver: Yes.

Cross Examination

Q. (By Mr. Tobin): When did you loan this money to Joseph Kaiser, this $960.00?

A. About June, 1954.

Q. You knew he owed you this money at the time you were examined in this court on September 6, 1955, did you not?

A. I have known it ever since I gave it to him.

Q. You were questioned with regard to your assets in this court at that time. Will you please tell us why you did not tell us about asset that you had against Joseph Kaiser? I want to read [226] that part about any loans you made.

The Referee: You will have to indicate in the record what you are asking.

Q. (By Mr. Tobin): Page 18, lines 16 to 19 of the reporter's transcript on the Section 21(a) examination, held in this court on September 6th. It reads:

"Q. When was the last time you made a loan?

"A. It has been a long time; many months ago."

Then, in response to the question, beginning at line 22, the same page:

"Q. (By Mr. Tobin): To sum the whole thing up—the only property that you have is the liquor that is in your garage; your interest in the liquor license, whatever it may be; and the interest in your family home back in New York, Niagara Falls, whatever that may be—is that right?

(Testimony of John Collins.)

"A. Well, I don't know. You talk about interest I have in the liquor license. It just depends on whether there is an interest there. The State Board says it is a privilege. Some people would say it is [227] an asset. I consider it somewhat as a liability. It costs a dollar a day to keep it."

Now, at that time when you were questioned as to your assets, why did you not mention this $950.00 claim you had against this man named Kaiser?

A. Why, it was as many assets as I could think of at the time.

Q. The only assets you claim at that time were the liquor license and the liquor, is that not right?

A. I really could not tell you.

Q. Now, with regard to your interest in the fixtures and personal property—may I have the last exhibit offered in evidence, Exhibit No. 11?

Referring to Bankrupt's Exhibit No. 11, paragraph 25, on page 2-A, will you please examine 25, paragraph 25? Have you read it?

A. Yes, I have.

Q. That is his signature on Bankrupt's Exhibit No. 11, is it not?

A. Over here is my signature.

Q. What do you mean, in paragraph 25, which I will read:

"It is specifically understood and agreed that between the sellers, Stanley E. Lefringhouse, is the sale of the furniture, fixtures and equipment, [228] goodwill, lease, trade name, inventory etc.; and the only interest John Collins has is the on-sale liquor

(Testimony of John Collins.)

license, all funds due at the close of escrow herein to the seller shall be paid solely to Stanley E. Lefringhouse with no monetary interest of any nature whatsoever to John Collins."

Now, did you or did you not claim an interest in the fixtures, equipment, inventory, and so forth, at the time you signed Bankrupt's Exhibit No. 11?

A. Yes, it was with the understanding of this $5,500.00 that Stanley Lefringhouse signed.

Q. What $5,500.00 was that?

A. It is right here. (Indicating.) The reason he sold the fixtures was on account of that chattel mortgage he had with Everett Rogers.

Q. This last instruction, January 21st, was signed long after the original escrow instructions, on January 14th, is that right?

A. I believe that was. My signature and the signature on the top sheet were about the same day, and Mr. Lefringhouse's signature and Juanita F. Lichtenfeld's was on the 14th.

Q. You testified yesterday regarding $1,000.00 in cash, and another $2,500.00 that went through your hands.

The Referee: The check was for $1,000.00? [229]

Mr. Tobin: Yes. In what sum did you get the $2,500.00 of that $3,500.00, a check or cash, or what?

A. Well, at first I gave Lefringhouse a check for $2,500.00. He went to the bank and could not cash it, and I had to go to the bank and cash it and brought the cash to him.

(Testimony of John Collins.)

Q. What did you do with the cash?

A. I gave it to Stan Lefringhouse.

Q. Do you know a man by the name of Louis Trapini? A. Yes.

Q. What is his occupation?

A. I believe he was a liquor salesman.

Q. Do you know where he is now?

A. I believe he is in Los Angeles.

Q. He is in the Penitentiary, is he not?

A. I don't believe so.

Q. Is it a fact you gave this $3,500.00 to Louis Trapini?

A. How would I get Stan Lefringhouse's signature?

Q. The question is, did you not give the $3,500.00 to Louis Trapini in cash?

A. That is not true; that is absolutely not true.

Q. Let's pinpoint it down. Is it not a fact you gave him $2,500.00 in cash, personally, instead of $3,500.00? [230]

A. It is not true that I gave Louis Trapini any amount of money at all.

Q. Did you have any dealings with him in connection with that license? A. No.

Q. None at all?

A. No, sir. I did not become acquainted with the man until after the license was issued.

Q. Under what circumstances did you become acquainted with him?

A. I owned the beer bar at Bell Gardens, the Schooner Cafe; and I was down at the brewery

(Testimony of John Collins.)

where he worked, or employed at—I was down there for dinner one day, and I met him, among other people.

Q. Now, getting back to the Kaiser loan again, you were asked, were you not, at page 17 of the transcript of the examination had in this courtroom on September 6, 1955, at line 11:

"Q. (By Mr. Tobin): Are you engaged in money lending?

"A. Not at this time. I have loaned a little money.

"Q. Approximately how much do you have out on loans at the present time?

"A. That would be an awful hard question to [231] to answer because I would have to think of the people. I would guess maybe $2,000.00.

"Q. Do you have notes from them?

"A. Well, no; I will tell you—you don't get a note when you loan a guy ten or twenty dollars.

"Q. (By the Referee): What was the largest amount of money you have loaned to any individual that has not paid you back?

"A. I think it is $184.00 at the present time."

Did you so answer those questions?

Q. Did you know that this man Kaiser owed you about $950.00 when you made up the list of your assets?

A. Yes; I gave it to Mrs. Carver.

Q. And did you tell Mrs. Carver to put that in as an asset?

A. I did; I believe she did.

(Testimony of John Collins.)

Mrs. Carver: Among the accounts receivable.

The Referee: All right, proceed.

Mr. Tobin: That is all.

The Referee: Any other questions, Mrs. Carver?

Mrs. Carver: At this time I would like to read [232] the provisions of this insurance policy.

The Referee: Let me have it.

Mrs. Carver: Will you read up at the top of the second page.

The Referee: Reading from Pacific Mutual Life Insurance Company Certificate No. 574976, the policy in which John Andrew Collins is described as an employee of a subscribing employer.

(Reads provisions from the policy.)

The Referee: Is there anything else?

Mr. Tobin: That is all at this time.

Mrs. Carver: That is all, at this time.

The Referee: Mr. Tobin, have you any other witnesses?

Mr. Tobin: No, your Honor.

The Referee: Will you try to get this all organized? We will adjourn this case until two o'clock today.

(Whereupon, further hearing on this matter was continued until two o'clock this date, at which time the following proceedings occurred.)

Mr. Tobin: I would like to put Mr. Lefringhouse on for one or two questions.

STANLEY E. LEFRINGHOUSE

resumed the witness stand and testified further as follows: [233]

Q. (By Mr. Tobin): Mr. Lefringhouse, you have been previously sworn? A. I have.

Q. Did you at any time subsequent to January 14, 1954, enter into any agreement, orally or in writing, for a partnership between you and this bankrupt, Mr. Collins? A. I did not.

Q. Did you at any time prior to January 14, 1954, enter into such an agreement?

A. I did not.

Q. Did you ever at any time enter into any such an agreement? A. I did not.

Q. Either orally or in writing? A. No.

Q. Now, with regard to the claim against you in the sum of $1,800.00, which this bankrupt asserts is an asset of his estate? Do you concede that you owe him anything?

A. No, I don't owe him a cent.

Mr. Tobin: You may cross examine.

Q. (By the Referee): What did you mean when you said that he got all of the money out of that?

A. I understand that they are talking about the $1,800.00, on the inventory. Well, Lichtenfeld put up, produced three or four checks, which were only [234] for gas and power; and he said he bought a few pieces of equipment which were not in the escrow, and any moneys given to the inventory were either given directly to Mr. Collins; or, as I recall, there were two checks, and one was given directly to John (Collins) and the other I signed over to

(Testimony of Stanley E. Lefringhouse.)

him. Mr. Lichtenfeld never brought those checks here.

Q. I still do not understand what you mean. You mean by the original agreement, by which Lichtenfeld was buying it? A. Yes.

Q. The $2,000.00 was put in escrow, was it not?

A. Lichtenfeld put $3,000.00 in escrow.

Q. Did he pay anything out of the $3,000.00?

A. Yes, he did.

Q. Just roughly, how much was that?

A. As I recall, it was between $1,600.00 and $1,800.00.

Q. Has that been put in here?

A. Yes, it has.

The Referee: All right, you may cross examine.

Cross Examination

Q. (By Mrs. Carver): Did you and Mr. Collins enter into any agreement for the formation of a corporation covering the cocktail bar?

Mr. Tobin: Objected to, not proper cross examination. [235]

Q. Did you and Mr. Collins *ever into* any agreement for the formation of a corporation, of the cocktail bar?

A. We talked about a corporation and went ahead and started one, but no assets were ever transferred. We could never agree. I owned the furniture and equipment and he owned the liquor license, and we could never agree, and it stopped right there.

(Testimony of Stanley E. Lefringhouse.)

Q. Was the corporation ever formed?

A. I don't know the legal term — nothing was ever transferred to it and no stock was ever issued. That is all I know about it.

Mrs. Carver: May I have this marked?

The Referee: Bankrupt's Exhibit No. 13.

Q. (By Mrs. Carver): I will show you a photostatic copy of Articles of Incorporation of Colleff's, No. 288,658, and ask you if this is your signature on this Articles of Incorporation?

A. Yes, that is my signature. May I read this?

Q. Yes, but I want to ask one more question. The company, was that a corporation formed partly by your name and partly by Mr. Collins' name?

A. That I don't know.

Q. Was it in connection with a cocktail bar known as Stan's Stagecoach Stop? [236]

A. We discussed the corporation and we formed whatever this is here; but there was never any assets transferred to it or never any stock issued.

Q. You might just read that.

A. (Witness reading.)

Q. I note this is dated June 22, 1954. During that time was the business being operated?

A. Yes, it was.

Q. That was after it had been taken back from Mr. Lichtenfeld? A. Yes, it was.

Mrs. Carver: That is all.

Examination

Q. (By the Referee): As I understand, after

(Testimony of Stanley E. Lefringhouse.)

the Lichtenfeld deal fell through, from that time on you were the sole owner and everything connected with this cocktail lounge except the license?

A. I was the sole owner of all the equipment, furniture, and the lease, everything but the business and his license.

Q. Who owned the business?

A. John A. Collins.

Q. Now, let us take a look at this involuntary petition for a moment. Do we have in evidence, Mr. Tobin, when the claim of Acme Distributing Company came into being, for $417.00. [237]

Mr. Tobin: Yes, that was testified to.

The Referee: Do you recall when it was, whether it was before or after, let us say, June 1, 1954?

Mr. Tobin: I don't recall. I didn't take any notes.

The Referee: Very well.

Mr. Tobin: Counsel tells me it was the 14th of May, 1954, between May 14, 1954, and December 16, 1954.

Q. (By the Referee): Mr. Lefringhouse, you got all of the receipts from the business, didn't you?

A. I did not.

Q. Who got some of them?

A. Well, when the matter was in escrow, Mr. Collins had about $4,000.00 worth of liquor bills in there, at the time of the Lichtenfeld escrow—there was $4,000.00 in it. As of the time right now, there is only about, I would say $2,800.00. $1,200.00 was

(Testimony of Stanley E. Lefringhouse.)

paid off on back bills and back taxes and there was just items like that, just bills.

Q. After you took possession again, after the Lichtenfeld deal had fallen through, you retained all of the money? None of it went to Mr. Collins, is that right?

A. All of the money that came in was used to pay bills, yes, sir. [238]

Q. Mr. Collins got nothing?

A. That is true.

Q. You have never rendered an accounting to Mr. Collins, have you, for that period?

A. No.

Q. Well, conceivably, then, it could turn out that you are responsible for the bills that were incurred during that period and not paid unless they might be offset by something that you paid to Mr. Collins. Now, let me ask you this question. Do you deny you have received a check for $1,000.00 from Mr. Collins in the latter part of 1952?

A. No, I don't deny it. May I explain it?

Q. What did you do with the money?

A. I was running a bar in the same place there in 1952; and I had gone down to the State Board many times, to try to get a liquor license; and each time I would go down they would say, "We are not issuing them; put in your name on the list." John (Collins) and Larry (Collins) were in this juke box business and they came to me and they said they could get a license for $3,500.00, and they would get it for me, and I would pay them $5,500.00

(Testimony of Stanley E. Lefringhouse.)

back, with a note at $150.00 a month. And, so what happened, John Collins wanted Larry Collins to go down with me to the Bohemian Distributing Company and meet Louie Trapini. [239]

Q. What did you do with the $1,000.00?

A. I gave it to John's brother, Larry Collins. We went down and paid Louis Trapini $1,000.00 on this liquor license.

Q. You paid $1,000.00 on the liquor license?

A. Yes; and Trapini was going to "grease the track" and see that the liquor license was issued.

Q. How did you give the thousand dollars into this matter?

A. As I recall, I went up to John Collins' house, and his wife wrote a check. I met Larry Collins down at our place, at the liquor store, the bar, and went over to the bank and cashed the check with Larry Collins, and went down and gave him the money, and went down to the Bohemian Distributing Company.

Q. Your testimony is, you gave $1,000.00 in cash, is that right? A. That's right.

Q. Did you later on receive $2,500.00 from Mr. Collins? A. I did not.

Q. Or any other sum?

A. I received in April two checks which were, as Mr. Collins testified, they were a loan, absolutely a loan, and I paid that money back—he ordered some liquor, and I gave the rest in cash.

Q. How much was that? [240]

(Testimony of Stanley E. Lefringhouse.)

A. That was approximately $600.00—one check for $250.00, and I forget the other—$287.00.

The Referee: Any other questions?

Mr. Tobin: That is all.

Cross Examination

Q. (By Mrs. Carver): Mr. Lefringhouse, do you recall in December, 1954, that Mr. Collins handed you $2,500.00 in cash?

The Referee: Wait a minute. What year?

Mrs. Carver: 1952.

A. No, he did not hand me any cash. He went down on the second visit to Louis Trapini. I saw him hand the money, $2,500.00; and Louis Trapini told us to go to the Board, and they would "grease the track."

Q. (By the Referee): Do I understand you saw Mr. Collins give this money, $2,500.00, to Mr. Trapini? A. Yes, I did.

Q. Was that at the same time you gave him $1,000.00?

A. No, that was about—this was Larry Collins. I said John Collins gave Louis Trapini $2,500.00 on, approximately, December 31, 1952.

Q. And when would you say you gave him the $1,000.00? A. I did not. [241]

Q. No, Trapini.

A. I did not give it to Trapini. I went down with John's brother, Larry; and I saw Larry give $1,000.00 to Trapini.

Q. Was that the same $1,000.00 you got when you cashed Mr. Collins' check?

(Testimony of Stanley E. Lefringhouse.)

A. That's right.

Q. You then handed it to Larry?

A. That's right.

Q. And that was about what date?

A. December 27, 1952.

Q. Then you think it was on December 31, 1952, that you saw John Collins give the same man $2,500.00? A. Approximately.

Q. Showing you Bankrupt's Exhibit No. 11, the escrow instructions, and calling your attention particularly to letter you deposited in escrow January 21, 1954, authorizing the escrow to pay John A. Collins $5,500.00, why did you sign that paper?

A. After this license that John and Larry were going to get for me, supposedly for me, they were going to put it in my name, and, instead, when we got to Mr. Moran, at the Board of Equalization, it was put in John's name. The agreement was that I was to pay him $5,500.00 at $150.00 a month. After the agreement, or the license was in his name, he wanted all cash, $5,500.00. He invested $3,500.00. [242] That is why, later, he would not sign the escrow until he got his $5,500.00.

Q. Bankrupt's No. 10 is a copy of a note that you and John Collins signed for $4,100.00. How was that amount arrived at?

A. It was $3,500.00 — at this time there was $3,500.00 they invested in the license, plus $325.00 tax that you have to pay the State, and five percent for 18 months from January, 1952, until July, 1954 — January, 1953, I mean, to July, 1954 — 18

(Testimony of Stanley E. Lefringhouse.)

months—five per cent on $3,825.00—it came out $4,111.00. They knocked off $11.00 and it was just $4,100.00.

Q. What were you to get for the note?

A. I was to get the liquor license, before they wanted $5,500.00; but when this investigation started up, in 1954, the Bonelli matter, then they came to me and they said they would sell the license for $4,100.00.

Q. Your testimony is that you were going to get the liquor license? A. Yes.

Q. Let us look down at the bottom of this paper. It says: "The foregoing obligation is hereby assummed and ratified this blank day of blank, 1954, Colleff, Incorporated, a California corporation."

What was that put on there for? We will [243] concede it was never probably signed by anybody, but why was it typed on there?

A. I don't know that. I went over there and we made this note, like I have told you, they wanted John Collins and my name on it, made to Larry, a chattel mortgage, so that they could discount the note. We went over to Miss Hofstetter's office and she made out a note. She was to hold the note. There was no delivery.

Q. You don't know anything about that typing I called your attention to? You don't even know what it means?

A. I can see they have what you say, a corporation.

Q. In this corporation you were to put in every-

(Testimony of Stanley E. Lefringhouse.)

thing in connection with the cocktail bar, were you not, into the corporation?

A. We discussed the corporation, yes.

Q. You were going to put everything you had in it?

A. We never could get together on it.

Q. And was Collins to put his license in?

A. Well, the original discussion on the corporation was to include even the liquor store. Then Collins made the agreement he would only pay $12,000.00 for the liquor store. Then he backed out [244] of the whole corporation idea, killed it right there; and we never transferred anything to it.

Q. If you had formed the corporation you would have been a stockholder, would you not?

A. If we had formed the corporation, yes.

Q. And Mr. Collins would have been a stockholder? A. I think so, sure.

Q. That was the general intention?

A. Sure.

Q. Were you to have fifty percent and Collins to have fifty percent?

A. Well, that was to be decided. He wanted the fifty percent, but for a $3,500.00 license. I didn't want to give him fifty percent when I had the equipment and lease and everything else. That is why we could not get together.

The Referee: Any questions?

Mr. Tobin: No, your Honor.

Mrs. Carver: No.

(There being no further questions, the witness was excused.)

Mr. Tobin: If your Honor please, we wrote to the Metropolitan Life Insurance Company for a report on these policies, and I have just received a letter from the Insurance Company. I will ask Mrs. [245] Carver if she will stipulate that if R. W. Arfson, Superintendent of the Issue Division of the Metropolitan Life Insurance Company, with his office in San Francisco, were called as a witness, he would testify in accordance with the facts as set forth in Metropolitan Life Insurance Company's office on December 2, 1955? I would like to offer this instead of Exhibit 12. It is the same facts.

The Referee: Well, we will leave the other one in the record. This will be Bankrupt's Exhibit 14.

Mr. Tobin: I would like to offer the Metropolitan Life Insurance Company's letter.

The Referee: Petitioning Creditors' Exhibit No. 9.

Mr. Tobin: I will ask you, Mrs. Carver, if you will stipulate that if Francis E. Hannon, Assistant Counsel of Columbia National Life Insurance Company, of Boston, Massachusetts, were called as a witness, he would testify in accordance with his letter to us of December 1, 1955, which I show you.

Mrs. Carver: I so stipulate.

Mr. Tobin: Then we offer in evidence the letter of December 1, 1955, of Columbia National Life Insurance Company.

The Referee: Petitioning Creditors' Exhibit No. 10.

Mrs. Carver: As to the letter from the Metropolitan Life Insurance Company, I will stipulate

as to the factual portion of it, reserving a motion [246] to strike as to any legal conclusions that might be contained in it.

The Referee: That will not be necessary. The Court will disregard any legal conclusion. Is there anything else?

Mr. Tobin: That is it, your Honor.

The Referee: Have you anything else?

Mrs. Carver: Yes. I would like to introduce at this time other provisions of the Health Accident Policy, to be read into the record.

The Referee: Let me see it. Let us say for the record at this time that Pacific Mutual Life Insurance Company Certificate No. 574,976, in addition to the provisions already read into the record, contains provisions for surgical expense benefits, laboratory, X-ray expense benefits, and additional accident expense benefits. Is there anything else?

Mrs. Carver: Not at this time.

The Referee: Well, have you made your computations?

Mrs. Carver: We have.

The Referee: What have you got, Mr. Tobin?

Mr. Tobin: I have got mine roughed out in the way I would argue it orally.

The Referee: Very well. Mr. Collins, do you anticipate that the hearing before the Industrial Accident Commission is set for Wednesday, the 7th, tomorrow?

Mr. Collins: I believe so. I called my attorney [247] and he is in San Diego today, but I expect he will be back tomorrow.

The Referee: I would like to continue this matter to Thursday, December 8th, at 10:00 o'clock.

Mr. Collins: I have a subpoena for Thursday.

The Referee: In what court?

Mr. Collins: The 9th of December.

The Referee: The 9th of December is Friday.

Mr. Collins: The 8th of December, at 1:00 o'clock.

The Referee: All right. This matter will be continued to December 8th at 10:00 a.m.

(Thereupon, further hearing in this matter was continued to Thursday, December 8th, at 10:00 o'clock a.m.) [248]

Thursday, December 8, 1955, 10:00 O'Clock A.M.

The Referee: Anything further?

Mrs. Carver: At this time Mr. Collins might take the stand and testify on what happened at the hearing yesterday.

JOHN COLLINS

resumed the witness stand, having been previously duly sworn, and testified further as follows:

Examination

Q. (By Mrs. Carver): Mr. Collins, there was a hearing yesterday before the Industrial Accident Commission in connection with the injury arising out of the course of your employment.

A. That is true.

Q. Will you state what happened in connection with that hearing yesterday.

A. There was an established minimum offer, $3,625.00, made before Referee Batistich.

Q. That offer was made by the insurance car-

(Testimony of John Collins.)

rier for the employer? A. That is true. [249]

Q. Is that offer now under submission?

A. Yes, by the Referee.

Mrs. Carver: That is all.

Q. (By Mr. Tobin): That is subject to $1,010.00 lien of the State of California?

A. That is true.

Mr. Tobin: Now, I would like to take this witness under Section 21-J, if your Honor please.

Examination Under Section 21-J

Q. (By Mr. Tobin): In your list of liabilities that was submitted to the Court, did you submit an indebtedness of $4,100.00 due to your brother Lawrence Collins? A. No.

Q. You knew at the time that you submitted this list of liabilities to the Court here that that suit No. 639780 was pending in the Superior Court against you on that note, did you not, or on that indebtedness?

A. Am I named one or as John Doe?

Q. Named one, as a defendant, in that suit?

A. I believe I was named in it some how.

Q. And you knew all about the suit, didn't you?

A. I did know about it, yes.

Q. You owe your brother $4,100.00, don't you?

A. I don't know whether I do or whether Stan Lefringhouse does. [250]

Q. Your deposition was taken in connection with that suit on March 30, 1955, was it not?

A. I couldn't tell you.

(Testimony of John Collins.)

Q. Just take a look at this.

A. That is what the book says, March 30, 1955.

Q. Let us look at the beginning of the deposition. You are the John Collins whose deposition was taken at that time? A. I believe so.

Q. You received a bill, did you not, from the court reporter, Robert L. Martin, for a copy of the deposition? A. No.

Q. Were you told by your attorney, Miss Hofstetter? A. That's right.

Q. The court reporter was trying to get his compensation for your copy of that deposition?

A. No. I knew there was going to be a bill for it eventually.

Q. Have you ever paid that bill?

A. The deposition has not been finished, has it?

The Referee: Just answer the question.

A. No, I never paid the bill.

Q. (By Mr. Tobin): Now, then, in that deposition you admit, don't you, having signed a promissory note to [251] your brother Larry Collins, in the sum of $4,100.00, that he sued on in Action No. 639,780?

A. I did sign a promissory note for $4,100.00.

Q. And when Larry Collins sued on that note you were never served, were you?

A. I believe I was, but I couldn't swear for sure, because I would have to ask the attorney.

Q. You were living at the same address you are living now, were you not?

(Testimony of John Collins.)

A. I have lived there ever since I have been in California.

Q. And your brother Larry Collins visited your home occasionally? A. Yes.

Q. You knew that he knew where you lived?

A. Sure, he knows where I live.

Q. Do you know any reason why you were not served in this Action No. 639,780?

A. I couldn't tell you. I don't know whether I was or was not.

Q. You don't deny, do you, you signed a promissory note to your brother, Larry Collins, on July 6, 1954, for the sum of $4,100.00?

A. That note is right here in the testimony.

The Referee: The question is, did you sign the note. [252]

A. I believe so. I am quite positive I did.

Q. (By Mr. Tobin): Have you ever paid it?

A. No.

Q. You are still owing it?

A. Well, if I owe it.

Mr. Tobin: That is all.

Mrs. Carver: No further questions.

(There being no further questions, the witness was excused.)

Mr. Tobin: I will call Robert L. Martin. [253]

* * * * *

The Referee: Let us try to sum up as best we can. I have before me the tabulation of assets and liabilities made by respective counsel in the case.

From the figures that I have I note the following amount of liabilities:

Trade creditors, $2,903.45.

Mrs. Carver: I believe that is taxes.

The Referee: No. Medical expenses, $1,400.50; automobile, liability, $600.00; taxes, consisting of sales taxes, $676.50; State Unemployment, $244.18; the United States, $2,963.85; total $3,884.53. The total of all the items mentioned is $8,788.48, to which should now be added an obligation of Mr. Martin, the reporter, of $78.75; making a total of $8,867.23.

As to the liabilities in connection with the Collins-Lefringhouse note, I will make no comment on that at this moment.

On the asset side: the household furniture is difficult to evaluate in this case as it is in every case.

The rule of bankruptcy is that property (in determining solvency) must be construed at its fair value. In other words, as I take it, a man is not insolvent if he could exchange his physical property for money and secure enough money to pay his debts. I don't think it has ever been the idea [254] that the value to be taken into consideration should be only such value as might be received if the property was sold instanter. I think a more reasonable rule is indicated that the value is that which the alleged bankrupt could realize from his property in a usual or ordinary sale.

Now, obviously, household furniture to the owner thereof is worth considerably more than he can sell it for, unless it should be of a particular type,

such as valuable antiques or things of that nature. We cannot take the cost, obviously, and we cannot take the figure which represents the value to the bankrupt. We may try to arrive at the figure which he could realize if he set out to sell his household furniture either in one lot to a dealer or to a user, or piece by piece.

I think under the circumstances of this case $2,000.00 is the fair value of the furniture, according to his testimony, that we have here.

As to the tools—we again have something of the same principle relating to household furniture. I think the tools had a fair value of $300.00.

As to the records, there is some question. The bankrupt has testified that in his judgment certain of his records, or at least one album of records are collectors' types of records. What their value is, of course, is very uncertain. Collectors usually pay what they have to pay; and in doing so they will [255] go as high, if necessary, as they are disposed to pay.

In my judgment, all the records in this case, including the collectors' items, have a fair value of $150.00.

The liquor situation, also, is rather confused and indefinite. Liquor, obviously, is a consumable item; and most people who have it on the premises are inclined from time to time to consume some of it.

I think the records in this case indicate a fair value of $200.00 for the liquor.

The bar glasses have a value of $40.00.

While there is no direct evidence so far as I can

recall with respect to the value of the Ford automobile, I think a fair assumption is that there is no equity in it.

If we have recorded the liabilities of $600.00, I believe it is fair to put the same figure on the asset side.

The accounts receivable, according to the evidence here, have no value. The one account of substance is, I think, the Kaiser transaction, is that the name?

Mrs. Carver: Yes.

The Referee: It does not have sufficient support in the record to warrant the Court in making a finding that it has any realizeable value. The finding [256] of the Court is that the accounts receivable have no value.

I am still confused about the life insurance, and I will have to resort to the exhibits to summarize the situation.

The Columbia National Life Insurance Company, according to the Petitioning Creditors' Exhibit No. 10, states that its policy now has a cash surrender value of $180.28. How much did you put that in for, Mrs. Carver?

Mrs. Carver: I had that $168.00.

The Referee: All right. Let us leave it stand for the moment, $180.28.

Metropolitan Life Insurance Policy No. 12704849, according to the Petitioning Creditors' Exhibit 9, had a cash surrender value of $134.92 on August 22, 1955. What did you have?

Mrs. Carver: $136.00.

The Referee: We will put down $134.92.

Policy No. 16245450 had a cash surrender value of $60.25. What did you have?

Mrs. Carver: $61.00.

The Referee: Policy No. 540980754, according to the Petitioning Creditors' Exhibit No. 9 has no cash surrender value. What did you have?

Mrs. Carver: No value.

The Referee: Then, under the terms of the following policies, and I am now reading from [257] Petitioning Creditors' Exhibit No. 9, none of which is on the life of the bankrupt, nor owned by him, the cash surrender value is payable to the insured, and that is a group of five policies; in one the insured is Ada Collins; the other, John R. Collins; the other, the insured is Paul Andrew Collins; the other, the insured is Ada J. Collins; the other, the insured is Pauline J. Collins.

Now, what do you have on those policies?

Mrs. Carver: No. 697587, on the life of Ada Collins, $104.51.

The Referee: How do you count that as an asset of Mr. Collins?

Mrs. Carver: The premiums were paid out of ccommunity funds.

The Referee: How much on that?

Mrs. Carver: $104.51.

The Referee: Proceed.

Mrs. Carver: No. 131530294, on the life of John R. Collins, cash surrender value, $33.88. No. 540980754,——

The Referee: No, I have No. 540980781.

Mrs. Carver: That is Ada Collins. That has no value.

On No. 540980754, no value.

No. 3891386, on the life of Pauline J. Collins, $144.62.

No. 5978642, on the life of Paul Andrew Collins, $106.74. [258]

The Referee: What other policies are there?

Mrs. Carver: There are two government policies, No. 223306——

Mr. Tobin: If your Honor please, we will object to the two government policies. There has been only one in evidence.

Mrs. Carver: I think Mr. Collins testified and it is in evidence that he has two $5,000.00 government policies on his life, with the proceeds payable in the event of his death to his wife; and the other five thousand payable to his children.

The Referee: Very well.

Mr. Tobin: There is only one shown.

The Referee: Objection overruled.

Mrs. Carver: The figure on No. 223306 is $514.15. On the missing policy—the policy itself is missing—we got the records from Washington or Denver on this missing policy. That is $514.15.

The Referee: Were they both taken out at the same time?

Mr. Collins: There was originally one $10,000.00 policy and they were split up.

The Referee: Any others?

Mrs. Carver: I believe that is all, your Honor, that is, other than the hospitalization.

Mr. Tobin: Mrs. Carver, might I ask if it is [259] true that there has been money borrowed on the policy and that is the reason it is missing.

Mrs. Carver: I would not be able to answer.

Mr. Collins: No. The only policy I know of where there has been any money borrowed on was done by my father and mother, on the Columbia National policy. I believe we discussed that. The loan was paid off by my father and mother years ago.

The Referee: Subject to further proof the life insurance will be held to have a cash surrender value of $1,403.75. The Court will exclude the policies, in which the insured are other than the bankrupt.

On the Lefringhouse situation the Court finds that this is entirely unliquidated. It is impossible to determine in this proceeding whether it constitutes an asset or liability; and included in that is the $4,100.00 note. It is signed both by Mr. Collins and Mr. Lefringhouse. If Mr. Collins should have a judgment entered against him in connection with that note, he might possibly have the right to contribution from Mr. Lefringhouse, in whole or in part.

One of the things that strikes the Court's attention is that the Lefringhouse deal, all through it, from the very beginning, involved a liquor license. Mr. Collins, apparently on his own initiative, apparently without the concurrence of Mr. Lefringhouse, appropriated the license exclusively [260] to his own use. I think the testimony is that he

came to the place of business and took the license off the wall. In any event he has treated it as his exclusive property, in that he has given notice of intention to transfer this license; in fact, he has done everything that would be required of him to perfect and consummate such transfer.

So, what is the effect of that? If there was some kind of an agreement between Mr. Lefringhouse and Mr. Collins with respect to the cocktail bar prior to the time that Mr. Collins removed the license, did the removal constitute a rescission, a termination, a cancellation of any such agreement? If so, what would be the legal effect as to the obligation of Mr. Collins to Mr. Lefringhouse, or vice versa?

So that the Court has come to the conclusion that so far as the Lefringhouse transaction is concerned it can be considered neither an asset nor a liability.

There is an action pending in which Mr. Collins on his own behalf claims damages, or the right of recovery, by reason of certain expenditures made on behalf of a minor son. That, also, is in an unliquidated state. The Court is not in any position to give it any value. It may possibly result in a judgment in favor of Mr. Collins. On the contrary, [262] judgment might be in favor of the defendants in the case.

Something was said about cash on hand at the date of bankruptcy, uncashed checks. The evidence is so vague with respect to that that the Court

must make a finding that no such assets were in existence.

Evidence is in the case with respect to a deposit made with the Vista Escrow Company. At the outset it was indicated there was $3,000.00 in the escrow. I think the evidence now, you can say, shows that the amount is only negligible. We have not been favored with any details of the escrow. We don't know what disbursements were made, whether or not Mr. Collins might possibly have a cause of action against anyone who received money out of the escrow. The situation is so indefinite that no asset value can be attached to it. The Court's finding is that Mr. Collins has no asset so far as the Vista Escrow is concerned.

Now, insofar as the matter that was heard yesterday—it was indicated that there might be a recovery of $3,625.00. I think the evidence shows there is a lien against that—my notes, I think, show the exact amount, but let us say that, approximately, there is $1,000.00.

Mr. Tobin: It is $1,010.00.

The Referee: We will just take $1,000.00. That would give us a net of $2,625.00. Do you have an [262] attorney in that case, Mr. Collins?

Mr. Collins: Yes, sir.

The Court: Is there any agreement as to compensation?

Mr. Collins: The Referee decides that.

The Referee: There will be something to be paid to counsel.

A. (By Mr. Collins): I don't know whether it

comes out of that or whether to just send a bill to the insurance company.

Mr. Tobin: Might I ask if the Referee did not allow $400.00 against the award to the attorney?

The Referee: Has any allowance been made by the Referee?

A. (By Mr. Collins): Not to my knowledge.

The Referee: The Court is without any experience before the Industrial Accident Commission.

Miss Hofstetter: Ordinarily they are paid out of the award. $400.00 would be an exceptionally high award in this sort of thing. It would normally run between $250.00 to $300.00, possibly $350.00. The attorney might get $400.00, but it would come out of the award.

The Referee: Well, may we say there would be a deduction of $250.00?

Mr. Tobin: So stipulated, so far as the petitioning creditors are concerned. [263]

The Referee: If this thing should get close, why, we will give counsel on both sides an opportunity to review the figures. That would give us a net of $2,375.00.

Now, Mrs. Carver, what about the insurance benefits in the event there is an award by the Industrial Accident Commission?

Mrs. Carver: I believe, your Honor, if there is an award, then the provisions of this insurance would have no effect. This provision would be in the event the injuries are not compensable under the Industrial Accident.

The Referee: All right. Are there any other assets, Mrs. Carver?

Mrs. Carver: I cannot think of any other.

The Referee: Let me take that sheet you had here. I will just write it over: cash surrender value; household furniture; records; liquor; accounts receivable; bar glasses; Hospital and Health Insurance; uncashed checks; claim against Davis & Pipe Reaming; claim for injury to son; life insurance; Vista escrow; bar fixtures; accounting with Lefringhouse. Now, have we covered them all?

Mr. Tobin: I don't believe the court covered the bar fixtures.

The Referee: Yes, I said that is involved. In Mr. Lefringhouse's situation I cannot regard it in this proceeding, either as an asset or a liability.

I have total assets of $7068.75, against liabilities of $8867.23. [264]

Under the petition I think that we will have to adjudicate Mr. Collins a bankrupt in this proceeding because, apparently, he has a valuable assets that is worth somewhere between four and five thousand dollars, which we may not take into consideration in determining solvency; and if he were to liquidate that assets he might possibly be able to bring about some kind of a disposition of this action.

Of course, he has his taxes of $3884.53, which probably would absorb most if not all of the proceeds of the sale, from the sale of the liquor license. Then he has another asset of not less than $1400, apparently on his life insurance policies.

However, all we can do here is to rule on the case as we have it, on the petition in involuntary bankruptcy.

In light of the findings of the Court with respect to the assets and liabilities, the conclusion must be that the bankrupt was insolvent on August 22, 1955; and that if he was—if he was insolvent, he committed this bankruptcy which is here complained of.

You made some reference, Mr. Tobin, offhand, during the course of the examination of some witness to the transfer of something — not the liquor license—which might come within the first act of bankruptcy. I think the only allegation is as to the liquor license, isn't it?

Mr. Tobin: That is right. [264-A]

The Referee: All right. I assume you want findings.

Mrs. Carver: Yes, your Honor. I note the Court has ruled on the title to some property.

The Referee: Yes.

Mrs. Carver: I might at this time call the Court's attention to the provisions of the Constitution of the State of California, wherein the exception to veterans is provided for.

The Referee: I would be glad to hear it.

Mrs. Carver: This provision is that property being assessed to both husband and wife's name—it is not necessary that the bankrupt and his wife have the property assessed to their names to get the veteran's exemption—either in the wife's name or the husband's name. I would like, if the Court would permit, to procure and give as a part of

the evidence in this case the statement signed by husband and wife with the Tax Assessor so that the record may be complete in connection with the homestead.

Mr. Tobin: That would not change things, and would be immaterial.

The Referee: Let me see if I understand. You said that the veteran's exemption may be claimed whether the property in question stands of record in the name of the veteran or the name of his wife, is that it? [265]

Mrs. Carver: In effect, except property in an amount over $1,000.00.

(Reading to the Court the provision in question.)

Mr. Tobin: That would be entirely immaterial. The title stood in her name and that is it.

The Referee: What do you think is the application of that?

Mrs. Carver: I don't know, your Honor, but I think it will show it was claimed to be owned by Mr. Collins, or by both of them. Personally I have not seen the application, and I may be taking a chance in submitting it to the Court.

The Referee: I won't require you to file it. You may file it, or, rather, a photostat of it, and it will be marked as Bankrupt's Exhibit next in order.

Now, let us say that the statements therein contained are favorable to the bankrupt in this case, that is, that such statement might tend to support a finding that the property on August 22, 1955, was community property—I want to cover that here, in my resumé, or summary of the evidence, so that

there may be no doubt in the minds of counsel or anyone else as to my views. I would still hold that the evidence is insufficient to overcome the presumption, because that particular bit of evidence might support or tend to support a finding that it was community property—it [266] is by no means conclusive that that would be the finding, and if the matter came up for determination by a court in which Mr. Collins was plaintiff and Mrs. Collins defendant, or vice versa, no one could say what the finding of the Court would be, or the legal conclusion that the Court would draw from the facts. That is why I say that this evidence is not sufficient to overcome the presumption.

We must always remember this—that Mr. Collins, by his voluntary act, placed his wife in a position where, dealing with third parties, she could have disposed of this property without Mr. Collins' consent; and that is the reason why I said this evidence is not sufficient to overcome the presumption.

The order of adjudication should be in a separate instrument. We will need, as you know, three of the orders of adjudication. You might as well make three of the findings and conclusions for this office in case we should need them. Will you deposit the original and the necessary copies for the use of this office, and transmit copies to counsel. We will hold the originals for five days before any action is taken. If counsel for Bankrupt wish to do so, they may make some suggestions as to form.

[Endorsed]: Filed December 19, 1955. [267]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

Proceedings of March 14, 1956

The Referee: In the Matter of John Collins.

Mr. Tobin: Ready.

Mrs. Carver: Ready. Your Honor, do you have the order remanding the case?

The Referee: Yes.

Mrs. Carver: I don't know whether the court would be interested in the transcript of hearing before Judge Yankwich.

The Referee: Yes. I would like to see it.

(Pause while Referee reads transcript.)

The Referee: You may proceed.

Mrs. Carver: I will call Mrs. Collins.

ADA JANE COLLINS

a witness called on behalf of the Bankrupt, having been first duly sworn, testified as follows:

The Referee: Will you state your name.

A. Ada Jane Collins.

Direct Examination

Q. (By Mrs. Carver): Are you the wife of Mr. Collins, the Bankrupt in this proceeding?

A. I am.

Q. Where do you reside now?

A. 10423 East Townley Drive, Whittier.

Q. Is that the property that was acquired by purchase from Mr. and Mrs. Hogan?

A. It is. [2]

Q. At the time of the purchase of that property was there an escrow opened in connection with the purchase? A. Yes.

(Testimony of Ada Jane Collins.)

Q. Where was the escrow opened?

A. At the Bank of America in Whittier.

Q. Did Mr. Collins handle the details of the escrow? A. He did.

Q. Did you have any conversation with Mr. Collins as to how the property should be vested?

A. No.

Q. Did Mr. Collins ever tell you to have the property deeded to you, in your name only?

A. No.

Q. Did Mr. Collins ever tell you that the property was yours? A. No.

Q. Did you ever consider*ed* the property your separate property? A. I did not.

Mr. Tobin: Objected to, calling for a conclusion.

The Referee: Objection sustained; the answer will go out.

Q. (By Mrs. Carver): When did you and Mr. Collins marry? A. In 1938.

Q. At the time of your marriage did you have any money [3] or property of your own?

A. I did not.

Q. Did Mr. Collins have any? A. No.

Mr. Tobin: What is the answer?

A. No.

Q. (By Mrs. Carver): What was the purchase price of the property involved here?

A. $13,100.

Q. How much was paid down at the time of purchase? A. Approximately $5300.

Q. Do you know where that money came from?

(Testimony of Ada Jane Collins.)

A. Well, it was an accumulation of savings over a period of years from his earnings.

Q. During the time of your marriage were you ever gainfully employed? A. No.

Mrs. Carver: That is all.

Cross Examination

Q. (By Mr. Tobin): You had charge of the opening of the escrow yourself? A. Yes.

Q. And you directed that the property be taken in your name?

A. Well, I don't know as I directed it be put in my name. It was a matter of convenience, so that I could take care of things so that he could go back East to get the money. [4]

Q. You were the one that directed the deed be made to you?

A. I don't know whether I should answer "yes" or "no." Do you have to direct someone?

Q. Who drew the deed?

A. I signed the paper, if that is what you mean.

Q. You mean the escrow instructions?

A. Yes.

Q. Who drew the deed from the seller to you—the person who sold you the property?

A. I don't understand.

The Referee: You don't understand the question?

A. No, I do not.

The Referee: All right; reframe the question.

Q. (By Mr. Tobin): You bought the property from these other people?

(Testimony of Ada Jane Collins.)

A. The Hogans, yes.

Q. So that you got a deed? A. Yes.

Q. Who drew that deed?

A. It is in my name. Is that what you want me to say?

The Referee: No. He wants to know if you know who actually typed up the deed?

A. No, I don't know.

Q. What did you mean by "for convenience"?

A. Well, there are papers and things. Naturally they have to be signed when you go into an escrow.

Q. Yes. [5]

A. My husband had to go back East to get the money because they would not take a personal check on an out-of-town bank. We wanted to be in there by Christmas, and Mrs. Hogan wanted to be with her husband for Christmas. There was not much time between the time we looked at the place and Christmas. John had to go back East, and someone had to be here to take care of the paper-work, and that is the way it was left.

Q. What paper-work do you mean?

A. The signing of the escrow papers.

Q. Were not those prepared beforehand?

A. Not to my recollection. This was a quick deal. I believe we looked at the house and moved in inside of a week or ten days.

Q. How long was he gone?

A. That I don't recall.

Q. He flew back?

A. Yes, to my recollection.

(Testimony of Ada Jane Collins.)

Q. He was only gone two or three days apparently. A. I really can't remember.

Q. And before he left who directed the title to the property be made to you?

A. I did not direct any title to be made to me at all.

Q. Was Mr. Collins the one that gave directions? A. I don't know.

Q. You don't know who did?

A. All I know is that I signed the papers. [6]

Q. You claim now that you don't own the property as your separate property?

A. We own it together. We don't own anything that way. What belongs to one belongs to the other. We just don't live that way.

Mr. Tobin: That is all.

The Referee: Is there anything else?

Mrs. Carver: No, your Honor.

(Witness excused.)

The Referee: Do you have any other witness?

Mrs. Carver: No; that is all, your Honor.

The Referee: Do you have any?

Mr. Tobin: No, your Honor.

The Referee: All right. Mrs. Carver, what do you think about it now?

(Discussion by Mrs. Carver.)

The Referee: You do not need to cite any authority upon the general law. It will be conceded by Mr. Tobin, as it is by the Court, that the presumption we are talking about is not conclusive. You do not contend otherwise, do you, Mr. Tobin?

Mr. Tobin: No, your Honor.

The Referee: You do not say this is a conclusive presumption in this case, do you?

Mrs. Carver: No.

(Discussion.) [7]

The Referee: I think we are agreed upon the law. I think the only question, as Judge Yankwich has indicated in his opinion — which I have read from beginning to the end—is as to whether this Referee believes the testimony that is given here by Mr. or Mrs. Collins, or either of them.

First of all, let me open my mind to you. So far as Mr. Collins is concerned, his testimony throughout the proceeding is so utterly unreliable that the Court could not place any confidence in any of it. Now, I am not making any suggestion of willful perjury on the part of Mr. Collins, but I don't know why so many of his statements turn out to be grossly incorrect. He talked about a $3000 amount of money tied up in an escrow, I think it was; and it turned out to be, I think that actually there was a very small amount of money actually available.

Mrs. Carver: If your Honor please, as to that, I don't believe there is anything on the face of it.

The Referee: All right; but it was just a careless statement, then, and why? Let me go along further, then I will hear you. Why? Because Mr. Collins instinctively wanted to build up the asset side of the picture and diminish the liability side, because that was the only question here—the matter of his solvency.

Now, I do not believe Mr. Collins' testimony about the transaction with which we are here concerned. I think [8] that it was given solely to put into the record evidence upon which this Court might hold that this real property was the community property of himself and wife; and that if the Court would so hold then it would establish solvency on his part.

Now, here is a married man who insists on giving away without consideration an item of property that is in the opinion of this court—I do not know if I made any findings on it or not,—but I would have if it were appropriate—was worth four or five thousand dollars, and here is a man who insists on giving it away. He did nothing to bring it back even after his creditors complained about it, and he does have creditors, he does have people he owes money to. Now, you have got to take all those things together. He wants to give away this asset—at least he says he does.

Now, it may well be that there was some deal under the table somewhere whereby John Collins expected to get some benefit from the transfer of this liquor license; but that is not what he says; and that is not what the transferee says. There was absolutely no consideration—John Collins wanted to give him this license, and he would take it. You take all of that, from one end of the record to another, the fact he wanted to give away this license; the fact that he has creditors and does not have money to pay them at the present time; and, further, that he is contending that he [9] has an asset

which under the laws of California his creditors nevertheless cannot reach.

Now, if this were a non-exempt asset I don't think John Collins would be now claiming he had an interest in it—I just do not. Taking it from there, what about Mrs. Collins? Should the Court believe Mrs. Collins' testimony?

Mr. Tobin: There is the presumption, also, that the wife is acting under duress of her husband.

Mrs. Carver: I would say that I don't believe the Court could disbelieve Mrs. Collins. * * * There is absolutely nothing to show that Mr. Collins intended to give this property to his wife.

The Referee: Well, may I interrupt you there? Now you are talking about the incidents of real estate transactions which have become necessary by reason of the practice of issuing policies of title insurance. We all know that title companies are loathe to insure title in a wife unless the husband of record has disclaimed any interest therein. But, remember that titles and their validity are decided by courts and not by title companies. Mrs. Collins might convince some court that this was her separate property notwithstanding the fact that Mr. Collins had not executed a quitclaim deed. There is nothing in the code which says if the husband has executed, delivered and [10] recorded a quitclaim deed that then the property shall be presumed to be the property of the wife. That is a requirement that is insisted upon by careful title companies. They don't want any undercover agreement between husband and wife, they want the husband on the rec-

ord, that he has no interest in it. But as far as actual title is concerned it is not necessary, yet it is the cautious and careful title companies that insist upon it. Go ahead.

Mrs. Carver: The evidence in this case is uncontradicted as to the ownership of the real property, which is sufficient to overcome the presumption that it is the wife's separate property.

The Referee: Well, what do you think about it, Mr. Tobin?

Mr. Tobin: (Discussion.)

The Referee: I want to take a look at the record of proceedings in this matter.

Mrs. Carver: Your Honor has read the transcript. Do you feel there is nothing further to explain?

The Referee: No. I think it is Judge Yankwich's opinion that the case should come back to him with the testimony of the wife. Let us review this record a moment. This involuntary petition was filed August 22, 1955. Then there was filed a motion by the alleged bankrupt to dismiss the petition. That was filed August 30, 1955 and set for hearing on September 6th, 1955. There was a partial [11] hearing on the morning of September 6th, 1955, and it went over until the afternoon, and the motion to dismiss was granted, with leave to amend. On the same day, September 6th, an amended petition was filed. On October 20th, 1955 a continuance was ordered to November 3d, 1955; and then it was continued to November 4th, 1955, at 2 o'clock. On November 4th it was partially heard and continued to

November 14th. On November 14th it was partially heard and continued to November 21st. On November 21st there was an informal pre-trial conference, and the hearing was continued to December 5th, 1955. It was partially heard on December 5th, and continued to December 6th. On December 6th it was partially heard, and continued to December 8th. On December 8th direction was given to counsel for petitioning creditors to prepare the order of adjudication and ordering the filing of schedules and so forth.

Now, I am making the findings and stating the conclusions, whichever it be—that in addition to not believing Mr. Collins I do not believe Mrs. Collins' testimony. First of all, I think the testimony of both Mr. and Mrs. Collins with respect to the real property is entirely self-serving and it is tailored to fit this particular situation in which Mr. John Collins finds himself; if the situation were otherwise the testimony would be otherwise [12] by both Mr. and Mrs. Collins.

I repeat that what they are trying to convince the court is that Mr. Collins has an interest in a piece of property but it is a property that his creditors cannot reach.

The reason I took the time to read this record of proceedings is to recall the length of time that went by during which this matter was before the Court. It is true that we are dealing at this moment only with a fragmentary part of the whole situation—we are dealing here with real estate. There are a lot of other angles, and they took time.

I have not the slightest doubt that at some stage during these proceedings Mrs. Collins was very seriously ill; but when it came to the real estate her testimony was a vital factor; and no explanation has as yet been offered as to why some effort was not made to get her testimony into the record at that time. I say that I have no doubt that she was very ill.

Mrs. Carver: May I be heard on that?

The Referee: In just a minute. I don't doubt but what she was very ill, but we took quite a lot of time in this case. It was not until December 8, 1955 that we finally concluded it.

Now, maybe this is entirely out of line, but I thought that this Referee had established the reputation [13] in this Court of being willing to accommodate himself to the necessities of any situation. And I know that if a request had been made that this Court would have adjourned the hearing to the bedside of Mrs. Collins and the reporter would have gone along, together with counsel and everybody else. If Mrs. Carver has got some explanation, that is one phase of it that I did not then understand and I do not understand now.

Mrs. Carver: I do have an explanation.

The Referee: In just a minute. It is true that there is something in the transcript about assuming that Mrs. Collins' testimony would be the same. It may be that counsel may have been misled by that. Now what do you wish to say?

Mrs. Carver: I want to say this, your Honor: that during the greater part of these hearings in

this case, while it was actually being tried, Mrs. Collins sat in this court room on four different occasions. She did not get a chance to go on—there were other witnesses who were taken each time. On the day that this matter did come up that Mr. Collins testified as to the real property, Mrs. Collins was in an oxygen tent in the Hollywood Hospital. She was critically ill with virus pneumonia. She was at the hospital from right after Thanksgiving until the 10th of December. I requested the Court—I said, "I must, when I am able, produce Mrs. Collins; and your response [14] in the record was that you would assume—I don't know the exact words—but that was in response to my statement that we would like to produce Mrs. Collins. She was not out because she was ill.

The Referee: All right. So that there will be no doubt about it, let us eliminate that entirely from consideration, and let us not give any effect at all to the fact that she was not produced as a witness at the initial hearings. Let us take it simply where it is today—her testimony here today. I cannot believe it because, as I say, it is just self-serving. Naturally, as the wife of John Collins, the interest of John Collins is her interest; and she does not want him adjudged a bankrupt any more than he wants to be adjudged a bankrupt.

Now, it is that kind of testimony upon which the Court is asked to say that the deed to property does not imply what a bona fide purchaser would be entitled to assume from it, namely, that she was the sole owner of the property, that it was her separate

property, and that she had a right to deal with it without a concurrence of her husband.

I repeat that I am taking the whole record in the case and the fact, among others, that Mr. Collins insists on giving away something that would be of value to himself or his creditors. Mrs. Carver says, "Well, he thought there was no value there, it was going to expire." Then he [15] found out differently. He found out even after this case had started that there was a substantial value there and still he does nothing. If he had come to this Court or had come to the petitioning creditors after the case had started and said "I was mistaken, I didn't think this would be of any value to me; now I am going to do everything in my power to get this back from this man that I am giving it to", then Mr. Collins would stand before the Court in an entirely different light so far as credibility is concerned.

So far as Mrs. Collins is concerned, the Court simply has to find that she is going along with her husband; and if the situation were different, then, too, she would go along with him in whatever it might seem to require.

All right. Mr. Tobin, you may prepare the necessary papers. I suppose that it means another review, does it not, Mrs. Carver, or does it automatically go back?

Mrs. Carver: It automatically goes back. The review is still pending before Judge Yankwich.

Mr. Tobin: It is merely a remanding, without a reversal. I imagine there will have to be additional findings.

The Referee: You may make such additional findings, after hearing the testimony of Mrs. Collins. I think it would be helpful if you would yourself re-read Judge Yankwich's comments. [16]

Mr. Tobin: I will.

The Referee: So that you will incorporate the things that he thinks the Referee should put in.

Mr. Tobin: Yes, your Honor.

The Referee: Of course, I am not going to leave it to you to put words into the Referee's mouth. I will read it and if not satisfied I will alter it. [17]

[Endorsed]: Filed March 27, 1956.

[Endorsed]: No. 15234. United States Court of Appeals for the Ninth Circuit. Acme Distributing Company, California Beverage & Supply Co., and Young's Market Company, Appellants, vs. John Collins, doing business as Stan's Stage Coach Stop, alleged bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: August 17, 1956.

Docketed: August 21, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15234

In the Matter of JOHN COLLINS, dba STAN'S STAGE COACH STOP, Bankrupt,

ADOPTION BY APPELLANTS OF POINTS ON WHICH APPELLANTS INTEND TO RELY AS FILED IN THE DISTRICT COURT

To the Honorable United States Court of Appeals for the Ninth Circuit:

The petitioning creditors, appellants herein, hereby adopt as their points on which they intend to rely on appeal, the points as specified in the District Court.

Dated this 20th day of August, 1956.

CRAIG, WELLER & LAUGHARN,
/s/ By THOMAS S. TOBIN,
Attorneys for Appellants

[Endorsed]: Filed Aug. 21, 1956. Paul P. O'Brien, Clerk.